

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case No.98 of 2018

The State of Tamil Nadu

Represented by the Deputy Commissioner (CT)

Tirunelveli Division

Tirunelveli - 627 002

... Petitioner

v.

Tvl. Raja Enterprises,
416, Tenkasi Road,
Rajapalayam

... Respondent

Prayer: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order dated 25.11.1999, made in M.T.A.No.135 of 1995, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai.

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For petitioner

...

Mr.V.Hari Babu

Addl. Govt. Pleader (Taxes)

O R D E R

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

Instant Tax Case Revision is filed to revise the order dated

25.11.1999, made in M.T.A.No.135 of 1995, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai.

2. Facts as deduced from the material on record are that Tvl.Raja Enterprises, Rajapalayam, respondent herein are manufacturers of cement powder and in respect of goods transported with 12 bills, the consignees have not taken delivery of the goods after verifying the damaged conditions of the goods. Consequently, there was completion of sales. In the place of such bills, the respondent had drawn fresh bills with the same sale bill numbers. During inspection of business place, the inspecting authorities did not find duplicate of the bills, secured at the check posts to prove completion of sales.

3. Assessing Officer, therefore noticed that there was suppression of sale of Cement Powder for Rs.48,245/- and passed an assessment order dated 15.03.1994. Attributable purchase of Lime Stone was estimated as Rs.3,427/- and assessed under Section 7-A. For defects in accounts, an addition of 2% equated to Rs.13,249/- was made to the book turnover. Under the above 3 counts, an addition of Rs.48,245/- was assessed and levied penalty of Rs.7,106/-

4. Aggrieved over the assessment, the manufacturer, filed an appeal before the Appellate Assistant Commissioner (CT), Virudhunagar, who, vide

order in AP No.341 of 1994, dated 11.10.1994, modified the appeal, as follows:

"5. I have heard the arguments of both the sides and also perused the connected records. The first dispute relates to the assessment made on the turnover of Rs.3,89,435/-. The place of business of the appellants was inspected by the Commercial Taxes Officials on 11.02.1993. During the course of inspection, sale bills and day book were recovered. The assessing officer has compared twelve copies of sale bills received from the check post with that of the sale bills maintained by the appellants. It revealed that that appellants had raised sale bills for lesser amounts when compared to the higher amounts noted as per the bills received from the check post. In the circumstances, the assessing officer has concluded that the appellants had sold goods for higher amounts but had recorded lesser amounts. The assessing officer has examined the sale bills maintained by the appellants and stated that they had recorded lesser amounts in 101 sale bills. Hence, he has estimated the suppression for 101 bills by multiplying by the average suppressed of Rs.4,020/- by 1010 and after deducting the sales turnover accounted for in the 101 bills, arrived at the sales suppression at Rs.3,89,435/-. The contention of the appellants is that the sales as per bills secured at the check post did not materialise. They have further contended that they prayed for an enquiry of the consignee but there was no compliance. They have further stated that with reference to 12 bills collected at the checkpost, the estimated suppression has been made which is arbitrary as per the decision reported in 19 STC 210 and 19 STC 302. The contentions of the appellants were examined. The assessing officer has compared

12 copies of sale bills received from the check post with that of the sale bills maintained by the appellants. It revealed that the appellants had raised sale bills for lesser amounts when compared with the higher amounts noted as per the sale bills received from the check post as below:

Sl.No.	Bill No.	Date	Amount as per check post bill copy	Amount as per sale bill maintained by the appellants Rs.
1	20	14.4.92	1,630.00	140.00
2	21	"	1,225.00	210.00
3	22	"	2,950.00	210.00
4	110	26.9.92	1,895.00	225.00
5	111	"	2,930.00	300.00
6	112	"	1,875.00	150.00
7	113	"	2,005.00	300.00
8	115	"	7,200.00	225.00
9	132	14.10.92	10,500.00	225.00
10	179	15.12.92	8,750.00	125.00
11	142	30.10.92	7,650.00	150.00
12	174	30.11.92	4,900.00	Not accounted for.

The contention of the appellants that the consignee had not taken delivery of the goods sent in the original sale bills and hence the sales did not materialise is not acceptable since it is not supported by any documentary evidence. A comparison of the copies of sale bills received from the check post with that of the sale bills maintained by the appellants revealed that they had accounted for lesser amounts. Therefore, it is clear that the appellants had sold goods for higher amounts in the 12 sale bills but had recoded lesser amounts. Therefore, the differential amount of Rs.48,245/-

has to be treated as suppression. Hence, the assessment made on the turnover of Rs.48,245/- is sustained.

The Assessing Officer has further estimated the suppression at Rs.3,41,190/- with reference to the remaining bills stating that they had substituted lesser amounts in these bills also. The assessing officer has not pointed out any documentary evidence to show that the appellants had substituted lesser amounts as far as these bills are concerned. Though the appellants had noted lesser amounts in these bills, it cannot be said that they had substituted lesser amounts for higher amounts. The assessing officer has not proved with clinching evidence in these cases that the appellants had raised sale bills for higher amounts and substituted with lesser amounts. The assessing officer has not established that the appellants had sold for higher amounts but had noted lesser amounts in the sale bills and suppressed sales. When there is no material evidence to hold that there was sales suppression by mere guess work estimated suppression cannot be made. Therefore, the assessment made on the estimated suppression of Rs.3,41,190/- is not sustainable and is accordingly deleted.

6. The next dispute related to the assessment made on the turnover of Rs.26,210/-. The assessing officer has estimated the turnover relating to limestone purchase liable for assessment under Section 7-A of the TNGST Act with reference to the suppression of finished goods. Inasmuch as suppression was noticed in finished goods (i.e.) cem Powder, the Assessing Officer has rightly estimated the turnover of raw materials (i.e) lime stone liable to tax under Section 7-A of the TNGST Act. The contention of the appellants is that they are

owning a quarry and hence they did not go in for purchase of lime stone. But, this contentions is not acceptable inasmuch as suppression was noticed in finished products, raw material turn over has to be estimated. The appellants had suppressed sales of cem power to a tune of Rs.48,245/-. Therefore, the suppression of Rs.3,247/- arrived at for the correspondent purchase turnover of lime stone is sustained. The assessment made on the turnover of Rs.3,41,190/- has been deleted and hence the assessment made on the corresponding purchase turnover of lime stone to a tune of Rs.22,963/- is deleted.

7. The next dispute relates to the addition of 2% made by the assessing officer. The assessing officer has pointed out the following defects.

- i) The appellants have not maintained and produced the accounts at the time of inspection.
- ii) They have not maintained day to day stock register or manufacturing account.

In view of the above defects, the assessing officer has made an addition of 2% amounting to Rs.13,219/- to the book turnover. The defects pointed out by the assessing officer are material defects. Therefore, the assessing officer cannot be said to be wrong in resorting to best judgment assessment. The assessing officer has made an addition of only 2% which is reasonable. Therefore, the addition of Rs.13,219/- made by the assessing officer is sustained.

8. The assessing officer has levied a penalty of Rs.65,154/- under Section 12(3) of the TNGST Act. The appellants has sold goods for higher amounts but had recorded lesser amounts as revealed from the comparison of check post bills with that of regular bills. Therefore, it amounts to wilful

suppression warranting levy of penalty under section 12(3) of the TNGST Act. The assessment made on the turnover of Rs.3,64,153/- had been deleted and not sustainable. Therefore, there is no case for levy of penalty on this turnover. Hence, the penalty of Rs.58,048/- imposed on this turnover is deleted. The assessment made on the actual suppression of Rs.51,492/- has been sustained. Therefore, the penalty of Rs.7,106/- imposed on this actual suppression is sustained.

9. In fine, the appeal is modified."

5. Being aggrieved, respondent has preferred M.T.A.No.135 of 1995, along with three other appeals, for the assessment years 1990-94, 1988-89 and 1991-92, before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore and the State filed enhancement petition.

6. In the Enhancement Petition, the State contended that the Appellant Assistant Commissioner (CT), Virudhunagar had deleted a turnover of Rs.3,01,190/- relating to under-invoicing, in respect of 101 bills and turnover of Rs.22,963/- taxable under Section 71, which is not acceptable to the revenue. The Appellate Assistant Commissioner, while deleting the turnovers observed that the Assessing Authority had not furnished any clinching evidence to prove that the respondent had sold for higher amounts, but added lesser amounts, in the sale bills and suppressed sales. However, he has sustained suppression in respect of available check post bills. The Assessing Authority proved a definite pattern of under

invoicing and consequent suppressions, by the respondent, with reference to the comparison of original bills, with the copy bills. The circumstantial evidence would also indicate that the respondent had indulged in such activities throughout the year. The suppression in available bill, works out approximately to an alarmingly 50%. It is also intriguing to note that the respondent drew bills for actual sales turn over but the intention was to suppress a major chunk of the turnover and accounted for, at least some turnover, but unreasonable enough to maintain that "some turnover" within a range i.e Rs.140/- irrespectively of actual sales turnover. It is also submitted that but for the verification of original bills, the systematic defrauding of government revenue by the respondent, would have gone unnoticed.

7. After considering the rival contentions, vide order dated 25.11.1999 in MTA No.135 of 1995, the tribunal modified the appeal and dismissed the enhancement petitions, as hereunder:

The points for consideration in these appeals are:

1. Whether the suppression arrived at by the assessing officer and sustained by the first appellate authority is correct or not?
2. Whether the Sec.7A assessment is correct or not?
3. Whether the 2% addition for defects in MTA No.135/95 is warranted or not?
4. Whether the levy of penalty is correct or not? and

5. Whether the Enhancement Petition filed by the department is entertainable or not?

Point No.1

In all the four appeals the appellants have disputed the following items involving suppression as per bills with reference to check post and bills maintained by him.

Sl.No .	MTA No.	Difference in No. of bills	Total Amount as per Check post Bill copy	Total Amount as per bills maintained by appellant	Difference and disputed amount of the bills
1	135/95	12	Rs.50,500/-	Rs.2,255/-	Rs.48,245/-
2	142/95	01	Rs.8,363/-	Rs.140/-	Rs.8,223/-
3	143/95	04	Rs.11,917/-	Rs.1,637/-	Rs.10,280/-
4	144/95	07	Rs.29,122/-	Rs.920/-	Rs.28,202/-

The contention of the appellants are that the consignees had not taken delivery of the goods sent in the original sale bills and hence the sale did not materialise. Subsequently they raised sale bills for the lesser amount in the same number of bills. The contentions put forth by the appellants are not believable and acceptable one since the appellants have not produced any documentary evidence for rejection of goods and also from the perusal of the sale bills of the check post and also the bills maintained by the appellants seems that uniformly they raised bills for below Rs.300/- irrespective of the turnovers and quantity. The first appellate authority had discussed very elaborately and given clear-cut findings for sustenance of the suppression. Hence, we see no reason to interfere with the findings of the first appellate authority in

respect of the suppression of differential amount worked out on the basis of check post bills and bills maintained by the appellants. Accordingly the turnovers of Rs.48,245/-, Rs.8,223/-, Rs.10,280/- and Rs.28,202/- are sustained.

Point No.2:

The lower authorities have estimated the purchase turnover of lime Stone utilised for the manufacture of Cem powder and assessed it under Sec.7A. From the beginning itself the appellants have contended that they are having their own quarry and from that quarry they utilised the Lime Stone for the manufacture. The contention of the appellants seems to be correct and acceptable, we are of the opinion that the assessment under Sec.7A is not sustainable and ordered to be deleted.

Point No.3:

The Assessing authority had made 2% addition for defects in respect of the assessment year 1992-93 (MTA.No.135/95) and sustained by the first appellate authority. The defects pointed out by the assessing officer are only technical in nature and not a materials defects warranting addition. Hence we are of the view that the 2% addition made and sustained by the Appellate Assistant Commissioner is not called for and accordingly it is ordered to be deleted.

Point No.4:

The assessing authority had levied penalty at 150% of the tax due on the suppression worked out by him. The first appellate authority had also sustained the same at 150% of

the tax due on the suppressions sustained by him in all the appeals. The appellants have suppressed the turnovers for all the years. Hence penalty is necessarily warranted but the maximum levy of penalty seems to be very excessive. Considering the nature of business and also in the interest of natural justice, taking a lenient view we fix the penalty at 50% of the tax due on the suppression now sustained by us.

Point No.5

The department has filed enhancement petitions for all the four assessment years to enhance the turnovers as levied by the assessing officer. We have carefully perused the enhancement petition filed by the department as well as the Appellate Assistant Commissioner's order. The first appellate authority has given a clear out findings in respect of the turnovers deleted by him and we see no reason to interfere with the same. Further the learned Additional State Representative has not pinpointed any specific or deliberate omission and also not placed before us any fresh evidences in restoring the assessment made by the Assessing Officer. The Appellate Assistant Commissioner after going through various aspects and also the facts and circumstances of the case has come to a logical conclusion and modified the appeals. The action of the Appellate Assistant Commissioner is within his discretionary powers vested with him. Therefore the Enhancement Petition filed by the Additional State Representative is not entertainable and it is ordered to dismiss for all the four years.

In the result all the four appeals are modified and

enhancement petitions in four appeals are dismissed.

8. Being aggrieved, State has preferred the instant Tax Case Revision on the following grounds:

"1. that the tribunal has failed to note that during the course of inspection on 11.02.1993, sale bills and day book were recovered which were verified with reference to the sale bills received from the Check post Authorities. Verification revealed that the appellants raised sale bills for lesser amounts when compared to the higher amount bills received from the checkpost. Therefore, the Assessing Authority concluded that the appellants sold goods for higher values but recorded lesser amounts and hence estimated the suppressions with reference to the sale bills and assessed the appellants to tax for the assessment years 1988-89, 1990-91, 1991-92 and 1992-93. Besides, penalty was also levied for the same under sections 12(3) and 16(2) of the Act.

2. that the tribunal even though had sustained the suppressions, erred in deleting the assessment made under Section 7-A and additions made thereon which is bad in law. The levy of penalty was also reduced to 50% of the tax due sustained by the Tribunal.

3. that the tribunal failed to make note of the observations made by the first appellate authority while sustaining the portion of assessment made by the Assessing Authority.

4. that the tribunal failed to note that suppression and under invoicing were noticed during the course of inspection and verification of records and therefore, suppressions were culled out, estimated and assessed to tax. The appellants even though had admitted the suppressions during the time of inspection ought not to have denied the transactions at this distance of time which is not acceptable.

5. that the tribunal failed to note that since there was sales suppression, the corresponding purchase of limestone was estimated treating them as purchases made from unregistered dealers. Therefore, the estimation made in respect of limestone was correctly estimated by the Assessing Authority which needs to be sustained.

6. that the tribunal failed to note being a manufacturer, the respondent ought to have maintained day to day stock account and manufacturing account. This was not done and hence the addition and estimation made by the Assessing Authority is quite in order which needs to be sustained.

7. that the tribunal erred in dismissing the Enhancement Petition filed by the State on the ground that State has not pinpointed any specific or deliberate omission and also not placed before the tribunal, any fresh evidences for restoring the assessment made by the Assessing Officer.

8. that the order of the Tribunal in dismissing the enhancement petition filed by the State without offering any

findings is bad in law."

9. Heard the learned Additional Government Pleader (Taxes).

10. Appellate Authority has considered the facts and evidence, passed orders, regarding suppression, addition of 2% made by the assessing officer, levy of penalty. When the respondent filed a further appeal to the Tribunal, and State filed an enhancement petition, the appellate Tribunal has framed specific points for consideration, as extracted supra, considered the material, and recorded a categorical finding on each of the points raised, which are tenable. Grounds raised in the instant revision case, cannot be countenanced. We do not find any valid reason to interfere.

11. Instant Tax Case (Revision) is dismissed. No costs.

सत्यमेव जयते (S.M.K., J) (V.B.S.,J)

11.04.2018

Index : Yes/No

Internet : Yes

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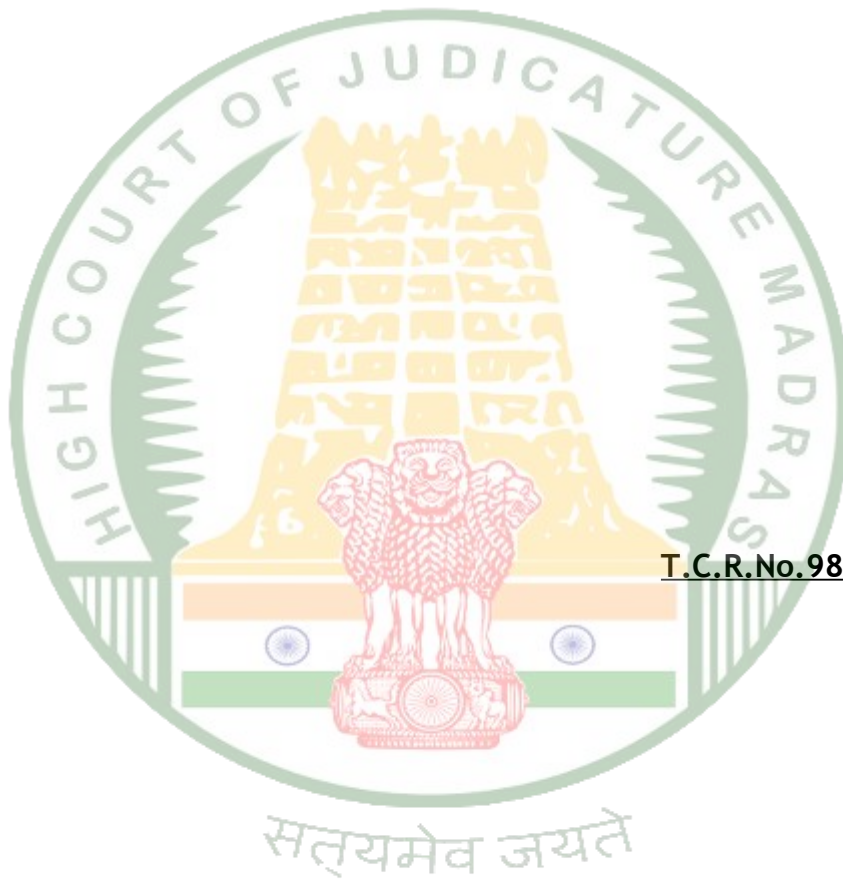
The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Madurai.

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and

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