IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.25 of 2018

The State of Tamil Nadu,
Represented by
The Joint Commissioner (CT),
Chennai (East) Division,
Chennai - 600 006. .. Petitioner/Appellant

Vs.

Tvl.Jagarwal Impex,
No.1, Rasi Chetty Lane,
Chennai - 1. .. Respondent/Respondent

Prayer: Tax Case Revision filed under Section 38 of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 29.10.2011, passed in STA No.284 of 2005.

For Petitioner : Mr.V.Hari Babu
A.G.P. (Taxes)
- - - - -

O R D E R

(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 29.10.2011, made in S.T.A.No.284 of 2005.

2. Short facts leading to the filing of the revision are that the respondent Tvl. Jagarwal Impex, Chennai - 1, were assessed on total and taxable turnover of Rs.64,85,549/- for the assessment year 2000-01 under the Tamil Nadu General Sales Tax Act, 1959. Based on the inspection conducted by the department on 05.09.2001, the assessment was revised assessing the turnover of Rs.17,25,452/- being the estimate sale value by adding G.P. at 5% on the suppressed input value of Rs.8,21,645/- with equal addition. Penalty under Section 16(2) was also levied in the

revision order by the Assessing Officer.

3. Aggrieved against the revision made, the dealer preferred an appeal before the Appellate Commissioner (CT)-II, Chennai, who allowed the same vide order in A.P.No.42/04 dated 25.06.2004. Against the orders of the Appellate Commissioner (CT)-II, Chennai, the State filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in STA No.284 of 2005.

4. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, vide order dated 29.10.2011, dismissed the State appeal.

5. Tax case revision is filed against the order of the Tribunal on the following substantial questions of law:

> "(a) Whether on the facts and circumstances of the case, the Tribunal is correct in accepting the books of accounts of the dealer/assessee at the time of hearing of appeal when the same was not produced before the Assessing Authority for passing order of assessment ?
>
> (b) Whether on the facts and circumstances of the case, the Tribunal is right in accepting the books of accounts of the dealer/assessee without remanding the same to the Assessing Authority for verifying the same with other connected records ?"

6. Substantiating the above substantive questions of law, Mr.V.Hari Babu, learned Additional Government Pleader (Taxes) submitted that:

(i) Appellate Tribunal has erred in holding that the suppressed input value of Rs.8,21,645/- vide invoice dated 16.01.2001, was accounted for in the books of accounts for the year 2000-2001, when the dealer did not produce the books of account before the Assessing Officer.

(ii) Appellate Tribunal has failed to consider the non-production of accounts before the Assessing Officer to prove that the transaction in question was actually accounted for in 2000-01.

(iii) Appellate Tribunal has grossly erred in admitting the retraction of the Statement of the dealer made at the time of inspection conducted on 05.09.2001 admitting the suppression and paid the tax due thereon voluntarily.

7. Heard the learned Additional Government Pleader (Taxes) and perused the materials on record. Let us consider as to how

the Appellate Assistant Commissioner (CT)-II, Chennai has dealt with the facts and issues:

> "6. The arguments made both by the Dept. Representative and the Authorised Representative were examined. The Inspecting Officer have arrived suppressions on the basis of the file marked A containing pages 1 to 46 which was required from the place of business relates to the details of an import of plastic toys from Debbo Toy Company Limited, Hong Kong vide Inoce No.200102129 dated 23.02.2001. The total value of the consignment in terms of India Rupees including the customs duty was Rs.4,28,980.00 and freight charges have been incurred for Rs.92,430.00 and excise duty which have been paid was Rs.1,28,877.00 and some other bank commission and other charges have been incurred in this regard. The appellants at that time of hearing of the appeal have produced purchase ledger for the year 2000-01 and it has been found even entered Rs.4,28,980.00 at page-3, of the purchase ledger and expenses Rs.2,772.00 totalling Rs.4,31,752.00 and custom duty Rs.1,28,362.00 and bank charges Rs.515.00 totalling Rs.1,28,877.00 which have been entered on 20.02.2001 and Rs.18,395.00 relates to clearing and forwarding + bank charges Rs.20,647.00 relates to charges paid to inter - model services and freight charges for Rs.92,430.00 and other charges for Rs.3,849.00. This entries were made on 1.3.2001, 6.1.2001 and 10.2.2001. It has been found that the appellants have found entered the purchases made from Hong Kong dealers. The Inspecting Officer have verified the records relates to 2001-02, whereas, these purchase were relates to the year 2000-01 which have been found duly accounted for. Hence the Inspecting Officer ascertain that the appellants have failed to account for these purchases made from Hong Kong was not correct since the appellants have accounted for these purchases for the year 2000-01 instead of the year 2001-02 since the purchases have been accounted for by the appellants the addition made by the Assessing Authority for Rs.8,62,726.00 by adding G.P of 5% on the import value of Rs.8,21,645.00 was set aside and relief

claimed by the appellants were allowed.

7. The equal time addition for estimated suppression arrived by the Assessing Authority for Rs.8,62,726.00 was also set aside since the relief claimed by the appellants on actual suppression is set aside and deleted.

8. In respect of levy of penalty, since the relief claimed on actual suppression is set aside the consequent levy of penalty of Rs.51,764.00 under Section 16(2)(d) of TNGST Act is also deleted.

In fine, the appeal stands ALLOWED."

8. Though State sought for reversal, upon hearing the rival parties, the Tribunal, vide order dated 29.10.2011, held as follows:

"The main contention of the appellant / State in this appeal is that the inspecting officers arrived suppression on the basis of the file marked 'A' containing pages 1 to 46 which was recovered from the place of business relates to the details of all import of plastic toys from Debo Toy Company ltd., Hong Kong vide invoice No.20010129, dated 16.01.2001, for the value of HKD73080. This consignment was cleared at Chennai Port in Bill of Entry No.0050 dated 3.2.2001. The total value of the consignment in terms of Indian Rupees including customs duty was Rs.4,28,980 and freight charges have been incurred Rs.92,430/- and excise duty which have been paid was Rs.1,28,877/- and some other bank commission and other charges have been incurred in this regard. The appellant at the time of hearing of the appeal have been produced purchase ledger for the year 2000-2001 and it has been found even entered Rs.4,28,980/- at page 3 of the purchase ledger and expenses Rs.2773/- totaling 4,31,752/- and customs duty Rs.1,28,877/- which have been entered on 20.02.2001 and Rs.18,395/- relates to clearing and forwarding + bank charges Rs.20,647/- relating to charges paid to inter model services and freight charges for Rs.3849/-. The entries were made on 1.3.2001, 6.1.2001 and 10.2.2001. It has been found that the appellant have found entered the purchases from Hong Kong dealers. The inspecting officer have verified the records relates to 2001-2002, whereas, these purchase were relates to the year 2000-01 which have been duly accounted for.

The Appellant Assistant Commissioner's order is found against the ethics of mathematics as the Appellate Assistant Commissioner (CT) had failed to appreciate that the original assessment order dated 27.11.2001, which was made under self assessment accepting the return and accounts has to be corrected by adding the purchase suppression noticed subsequent to the return and of rendered under self assessment.

(i) The figure rendered in return and account shown under self assessment as purchase was at Rs.80,59,473/- (P.55, 61 and 65 to 69 of assessment record) and that of sales under self assessment shown in the return and account which was adopted under self assessment at Rs.64,85,549/- (P.61, 73 and 74). The year in dispute is 2000-01. Self assessment was made on 27.11.2001.

(ii) After rendering of return and account under self assessment the unit was inspected on 5.9.01 and the inspection resulted unearthing of purchase suppression and its consequence sales omission at Rs.8,62,726/- at 4% and hence equal time addition of sales omission was also made by the revenue.

(iii) The Appellate Assistant Commissioner (CT) in his order at page 4 para 6 had deleted entire addition under the pretext that the suppression noticed at the time of inspection was subsequently accounted for. This is the main contention by the Appellate Assistant Commissioner (CT).

(iv) The Appellate Assistant Commissioner (CT)'s contention is not acceptable, because the dealer had admitted the purchase omission and consequential sales suppression at Rs.8,62,726/- before the inspecting official and also handed over cheque for Rs.8,58,370/- in cheque No.606750 dated 6.9.2001 drawn on IOB, Sowcarpet (Page 99 of assessment record). Therefore facts once admitted before the inspecting official cannot be rebutted subsequently be the appellant before Appellate Assistant Commissioner (CT).

(v) Even assuming the consequential sales suppression at Rs.8,62,726/- as subsequently accounted for, the assessment ought to as follows:

(a) Assessment made originally under self assessment on 27.11.2003	Rs.64,85,549/-
(b) Assessment which requires to be added on account of subsequent accountance of Rs.8,62,726/-	Rs.8,62,726/-
(c) Add euqal time addition	Rs.8,62,726/-
Assessment ought to be	Rs.82,11,001/-
(d) Assessment re-fixed by A.A.C.	Rs.64,85,549/-
(e) Omission of assessment	Rs.17,25,452/- @ 4%

Therefore, even if Rs.8,62,726/- is admitted to have been accounted for subsequently, this turnover Rs.8,62,726/- was not inclusive of in the assessment on Rs.64,85,549/- made under self assessment order dated 27.11.01.

The verification now made to ascertain the correctness of Appellate Assistant Commissioner (CT)'s order also testifies that the purchase statement at page 65 to 69 meant for self assessment was prepared only after inspection dated 5.9.01 and self assessment was made on 27.11.01. Hence the purchase suppression liquidated as a result of inspection which was admitted by the appellant was found accounted only after inspection and the purchase statement pages 65 to 69 was conveniently prepared cooking up of the closing stock value at Rs.17,85,183/- (page 61) of assessment record). Had the purchase statement was filed before May 2001, the position would have been different and only in such circumstances, the assumption of the Appellate Assistant Commissioner (CT) can be accepted. The purchase statement was prepared only after inspection dated 5.9.01, the figures admitted before the inspecting official was subsequently cooked up as a make belief statement and the self assessment was got made only after 5.9.01 i.e. on 27.11.01. Thus the contention of the appellant and Appellate Assistant Commissioner (CT) is not acceptable.

Thus the Revenue prayed to set aside the Appellate Assistant Commissioner (CT)'s order and restore the Assessing Officer's order and render justice.

The respondent side filed written arguments and orally argued that in fact the inspection was on 5.9.2001, which falls under subsequent assessment year. It is well known fact that at the time of inspection, the officials had verified the books of accounts relating to the assessment year 2001-2002 alone and it is evident from the inspection report, wherein the details of books signed and initiated by them is being mentioned. It is obvious that the import effected in the year 2000-2001 would not be accounted for in the year 2001-2002, but only in the year 2000-2001. The alleged imported turnover was duly accounted for in the books of accounts much earlier to the date of inspection. Even in the reconciliation statement prepared by the officials at the time of inspection, reflects sales from 1.4.2000 to 5.9.2001 as Rs.4,90,374/- and the closing stock of Rs.13,04,809/-. It is to be noted that in the absence of purchase, there is no possibility of showing closing stock of Rs.13,04,809/-.

The respondent submitted that the alleged suppressed turnover of Rs.4,28,900/- is duly accounted for in the books of accounts and tax was paid by effecting sales of the same, in the previous assessment year itself. It is also not out of place to mention that the entire payment such as customs duty, clearing and forwarding charges, clearing agent charges etc., are made through bank and the same has been relied on at page 2 of the assessment order to arrive at the estimated value of the consignment to the tune of Rs.8,21,645/-. Having relied on the documents such as bank challan and admitted the fact that the payment is through bank, it was not justified in concluding that the respondent would have suppressed the estimated turnover. It is relevant to note that even the import was done against the Letter of Credit through bank and the payment made to bank duly finds place in the books of accounts. It is also not out of place to mention that the accounts for the year 2000-01 (impugned year) was completed even before the date of inspection and the report, such as balance sheet, trading accounts etc., were filed for completion of income tax assessment. So, from the above factual findings, one can infer that the officer has blindly adopted the inspection report as such without application of mind afresh. For making best judgment assessment something more concrete is required which would enable the judicial mind to reach the conclusion that the dealer actually suppressed the turnover which was fixed by best judgment in the absence of any such categorical finding, the best judgment assessment made by the officer is wrong and contrary to law and opposed to the facts and circumstances of the case.

It is submitted that the levy of penalty under Section 16(2) of the Tamil Nadu General Sales Tax Act, 1959 is also contrary because the estimation of turnover is based on the turnover available in the books of accounts. In such condition it will not be termed as willful suppression of turnover by the dealer. So he prayed to dismiss the STA.

Heard both. Records perused.

The issue to be decided in the appeal is (i) Whether the order of the Appellate Assistant Commissioner is sustainable or not ?

It is an admitted fact that Tvl.Jagarwal Impex dealers in toys and electronic toys at No.1, Kasi Chetty Street, Chennai -1, were finally assessed on a total and taxable turnover of Rs.64,85,549/- & Rs.64,85,549/- respectively under the self assessment scheme under the Tamil Nadu General Sales Tax Act, 1959 for 2000-2001 but on inspection by the Enforcement Wing Official on 5.9.2001, they found out D7 slips and come to the conclusion that there was a suppression of Rs.8,21,645/-

and also add equal time addition and then determined the estimated suppression of Rs.17,25,452/- and levied tax at 4% and also levied penalty. On appeal, the Appellate Assistant Commissioner allowed the appeal. On perusal of the assessment file at page 114 of the check notes in column No.13, it is found on the selling source of purchase "No purchase during 2001-2002". On pursuant the appeal file at page 27, the inspecting officers initiated and written as "inspected" 5.9.2001 Deputy Commercial Tax Officer. Group VI E(C) at page 26, the accounts for 2000 has already been found. So the documents proves that it contains import of goods from Hong Kong and also import charges like customs duty, freight charges and other charges. So there is no force in the contention of the appellant that the above said accounts were not brought into account. At the time of inspection, the inspecting officers also signed on that date i.e., on 5.9.2001. Since the turnover was found in the books of accounts, it could not be termed as suppression. On relying the fact, the Appellate Assistant Commissioner come to the conclusion that the order of the revisional authority is not correct and he set aside the suppression and equal time addition and also the imposition of penalty. On hearing the both sides and on perusal of records and orders of Appellate Assistant Commissioner, we have come to the conclusion that there is no error in the order of the Appellate Assistant Commissioner and we hereby confirm the order of the Appellate Assistant Commissioner and consequently the STA is dismissed.

In fine, the appeal is dismissed."

9. Appellate Authority and Tribunal are the final fact finding authorities and when the books of accounts were produced, the Appellate Authority has analysed the same. Turnover is found in the books of accounts. Both the Appellate Authority and the Tribunal have properly analysed the facts and evidence and accordingly answered the issues in favour of the assessee. There is no perversity in the finding. There is no question of law much less substantial question of law warranting reversal of the impugned order.

10. Accordingly, Tax Case Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Secretary
Central Board of Revenue
New Delhi

T.C.(Revision)No.25 of 2018

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