

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Revision) Nos. 29 to 31, 66 to 69 and 99 to 103 of 2018
and 114 to 116 and 155 to 166 of 2018
and C.M.P.Nos.4660 to 4662 and 6490 to 6493 of 2018

M/s.Surya Service Station,
Rep., by Tmt.K.E.Rehamath,
Tmt.K.E.Regina,
Thiru K.E.Noushad,
Tmt.K.E.Reesha,
Legal heirs of the then Proprietor,
Late K.M.Abdul Gafoor,
Palloor, Mahe-673 310. Petitioner in TC(R) 29 to 31/2018

M/S. MAHE BEACH TRADING CO
REP BY TMT.K.E. REHAMATH
TMT.K.E. REGINA
THIRU.K.E. NOUSHAD TMT. K.E. REESHA
LEGAL HEIRS OF THE
THEN PROPRIETOR LATE K.M. ABDUL GAFOOR
PALLOOR , MAHE 673 310Petitioner in TC(R) 66 to 69/2018

M/S. MAHE AUTO FUEL
ENTERPRISES REP BY TMT. K.E.REHAMATH PROPRIETRIX
PARAKKAL MAHE 673 310 ...Petitioner in TC(R) 99 to 103/2018

THE STATE OF TAMIL NADU
REP.BY THE JOINT COMMISSIONER (CT)
CHENNAI (EAST) DIVISION CHENNAI - 600 006
...Petitioner in TC(R) 114 to 116/2018

THE APPELLATE ASSISTANT
COMMISSIONER (CT) COMMERCIAL TAXES DEPARTMENT
PUDUCHERRY. ..Petitioner in TC(R) 155, 156, 159 & 163/2018.

THE APPELLATE ASSISTANT
COMMISSIONER (CT) COMMERCIAL TAXES DEPARTMENT
PUDUCHERRY ..Petitioner in TC(R) 157/2018, 160,
161, 162 & 164/2018.

THE APPELLATE ASSISTANT
COMMISSIONER (CT) COMMERCIAL TAXES DEPARTMENT
PUDUCHERRY. ..Petitioner in TC(R) 158, 165 & 166/2018

-vs-

The Appellate Assistant Commissioner (CT),
Puducherry.

... Respondent in TC(R) 29 to 31, 66 to 69/2018 &
99 to 103/2018.

TVL.PRABHU LASER COMPONENTS
PVT LTD. NO.27D SIDCO INDUSTRIAL ESTATE
THIRUMUDIVAKKAM CHENNAI -44
..Respondents in TC(R) 114 to 116/2018

M/S. MAHE BEACH TRADING CO.
REP BY TMT. K.E. REHAMATH
TMT. K.E. REGINA
TMT.K.E. NOUSHAD
TMT.K.E. REESHA
LEGAL HEIRS OF THE
THEN PROPRIETOR LATE K.M. ABDUL GAFOOR
PALLOOR MAHE 673 310.
..Respondents in TC(R) 155, 156, 159 & 163/2018.

M/S MAHE AUTO FUEL ENTERPRISES
REP BY TMT.K.E.REHAMATH PROPRIETRIX
PARAKKAL MAHE 673 310
..Respondent in TC(R) 157/2018, 160,
161, 162 & 164/2018.

M/S. SURYA SERVICE STATION
REP BY TMT. K.E. REHAMATH TMT. K.E. REGINA
TMT. K.E. NOUSHAD TMT. K.E. REESHA
LEGAL HEIRS OF THE
THEN PROPRIETOR LATE. K.M. ABDUL GAFOOR
PALLOOR MAHE 673 310 ..Respondent in TC(R) 158, 165 &
166/2018

Prayer in TC(R) Nos. 29 to 31/2018, 66 to 69/2018 & 99 to
103/2018 & 155 to 166/2018:

Tax Case (Revision) filed under Section 51(2) of the
Pondicherry Value Added Tax Act, 2007 to revise the order of the
Value Added Tax Appellate Tribunal at Puducherry in
T.A.No.1/2017 to 12/2017 dated 11.08.2017, against the order of
the Appellate Assistant Commissioner (CT), Commercial Taxes
Department, Puducherry made in

dated 21.02.2017 in Appeal Nos.41/PVAT/2009-2010/AAC
dated 09.02.2017 in Appeal No.39/PGST/2009-2010/AAC
dated 15.02.2017 in Appeal No. 40/PVAT/2009-2010/AAC
dated 09.03.2017 in Appeal No.33/PGST/2009-2010/AAC
dated 10.03.2017 in Appeal No.34/PGST/2009-2010/AAC
dated 14.03.2017 in Appeal No.35 & 36/PVAT/2009-2010/AAC
dated 14.03.2017 in Appeal No.35 & 36/PVAT/2009-2010/AAC
dated 27.02.2017 in Appeal No.25 & 26/PGST/2009-2010/AAC
dated 27.02.2017 in Appeal No.25 & 26/PGST/2009-2010/AAC
dated 03.03.2017 in Appeal Nos.27/PGST/2009-2010/AAC
dated 07.03.2017 in Appeal Nos.28 & 29/PVAT/2009-2010/AAC
dated 07.03.2017 in Appeal Nos.28 & 29/PVAT/2009-2010/AAC
dated 09.03.2017 in Appeal Nos.33/PGST/2009-2010/AAC
dated 10.03.2017 in Appeal Nos.34/PGST/2009-2010/AAC
dated 07.03.2017 in Appeal Nos.28 & 29/PVAT/2009-2010/AAC
dated 09.02.2017 in Appeal Nos.39/PGST/2009-2010/AAC
dated 14.03.2017 in Appeal Nos.35 & 36/PVAT/2009-2010/AAC
dated 07.03.2017 in Appeal Nos.28 & 29/PVAT/2009-2010/AAC
dated 27.02.2017 in Appeal Nos.25 & 26/PGST/2009-2010/AAC
dated 27.02.2017 in Appeal Nos.25 & 26/PGST/2009-2010/AAC
dated 14.03.2017 in Appeal Nos.35 & 36/PVAT/2009-2010/AAC
dated 03.03.2017 in Appeal Nos.27 /PGST/2009-2010/AAC
dated 15.02.2017 in Appeal Nos.40/PVAT/2009-2010/AAC and
dated 21.02.2017 in Appeal No.41/PVAT/2009-2010/AAC respectively.

Prayer in T.C(R) Nos.114/2018, 115/2018 & 116/2018:

Tax Case filed under Section 60 of the TNVAT Act , 2006 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai dated 14.07.2016 made in S.T.A. Nos. 180/2016, S.T.A. No. 181/2016 & S.T.A. 182/2016 respectively against the order of the Appellate Deputy Commissioner (CT) Chennai (East) dated 04.05.2015 in A.P. No. VAT 216/2014, 30.03.2015 in A.P. No. VAT 217/2014 and 04.05.2015 in A.P. No. VAT 154/2015.

For Appellants : Mr.R.Natarajan
in T.C.R. 29 to 31, for Mr.A.N.R.Jayaprathap
66 to 69 & 99 to 103/2018
and for Respondent in
T.C(R) 155 to 166/2018

For Respondents : Mrs.N.Mala
in TC(R) 29 to 31 Additional Govt. Pleader
66 to 69 & 99 to 103/2018 (Puducherry)
and appellant in T.C(R)155 to 166/2018.

For Appellant : Mr.V. Haribabu
in T.C(R) Nos. Additional Govt. Pleader
114 to 116/2018.

For Respondent
in T.C(R) Nos.
114 to 116/2018

: No Appearance

COMMON ORDER

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

These Tax Case Revisions have been filed under Section 24 of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as "the PVAT Act").

2. There are two sets of revisions; one set of revisions filed by the petitioners/dealers, which have been numbered as Tax Case (Revision) Nos. 29 to 31, 66 to 69 and 99 to 103 of 2018; the other set of tax case of revisions are Tax Case (Revision) Nos. 114 to 116 and 155 to 166 of 2018, which have been filed by the State challenging that portion of the orders passed by the Appellate Tribunal under the PVAT Act by which, the Tribunal granted partial relief to the assessee in reducing the penalty imposed.

3. In the tax case revisions filed by the dealers, the challenge is to the manner in which the assessment proceedings were done by the Assessing Officer; how the first appellate authority failed to perform the statutory duties enshrined upon him; and how the Tribunal failed to interfere with the orders passed by the lower authorities and virtually obliterated the powers conferred on it under the provisions of the PVAT Act. The substantial challenge in the tax case revisions filed by the State is on the reduction of the penalty imposed.

4. It is not in dispute that the tax has already been paid. Though there is a faint plea raised by the assessee with regard to the levy of tax, essentially the challenge is to the levy of penalty. However, in this order, we will consider the correctness of the orders passed by the Assessing Officer, the first appellate authority and the Appellate Tribunal in its entirety.

5. In the tax case revisions filed by the dealer, the following substantial questions of law have been raised.

T.C. (R) Nos. 29, 31, 68, 69, 102 and 103 of 2018:-

"(i) Whether in the facts and circumstances of the case the Hon'ble Appellate Tribunal committed an error of law in confirming the levy of penalty imposed under Section 24(3) of the Act which is not mandatory, having given a finding that taxes on the disputed turnover were paid during the assessment proceedings.

(ii) Whether in the facts and circumstances of the case the Hon'ble Appellate Tribunal erred in confirming the levy of penalty under Section 24(3) of the Act that mere non disclosure does not automatically lead to levy of penalty.

(iii) Whether in the facts and circumstances of the case the Appellate Tribunal failed to consider the conduct of the petitioner in complying with the payment of the tax on the disputed turnover before the completion of assessment.

(iv) Whether in the facts and circumstances of the case mere non disclosure of the disputed turnover without any deliberate intention would attract the levy of penalty under Section 24(3) of the Act, more particularly when Section 24(3) of the Act is not mandatory.

(v) Whether in the facts and circumstances of the case the Appellate Tribunal erred in not following the principles rendered by this Hon'ble High Court in WP Nos.4385 to 4392 of 2009 dated 20.12.2013 in similar circumstances.

(vi) Whether in the facts and circumstances of the case there is a justification to levy penalty under Section 24(3) of the Act when the turnover is determined as that has been reflected in the accounts. The Appellate Tribunal ought to have set aside the penalty on the very disputed turnover is available in the books of account.

(vii) Whether in the facts and circumstances of the case the Appellate Tribunal is justified in confirming the levy of tax on the disputed turnover which was determined without providing details of the supply particulars received from the Oil Companies which would amount to the violation of principles of natural justice and against the assessment procedure under the Act."

T.C. (R) No.30, 66, 67 and 99 to 101 of 2018:-

"(i) Whether in the facts and circumstances of the case the Hon'ble Appellate Tribunal committed an error of law in confirming the levy of penalty imposed under Section 13(3) of the Act which is not mandatory, having given a finding that taxes on the disputed turnover were paid during the assessment proceedings.

(ii) Whether in the facts and circumstances of the case the Hon'ble Appellate Tribunal erred in confirming the levy of penalty under Section 13(3)

of the Act that mere non disclosure does not automatically lead to levy of penalty.

(iii) Whether in the facts and circumstances of the case the Appellate Tribunal failed to consider the conduct of the petitioner in complying with the payment of the tax on the disputed turnover before the completion of assessment.

(iv) Whether in the facts and circumstances of the case mere non disclosure of the disputed turnover without any deliberate intention would attract the levy of penalty under Section 13(3) of the Act, more particularly when Section 13(3) of the Act is not mandatory.

(v) Whether in the facts and circumstances of the case the Appellate Tribunal erred in not following the principles rendered by this Hon'ble High Court in WP Nos.4385 to 4392 of 2009 dated 20.12.2013 in similar circumstances.

(vi) Whether in the facts and circumstances of the case there is a justification to levy penalty under Section 13(3) of the Act when the turnover is determined as that has been reflected in the accounts. The Appellate Tribunal ought to have set aside the penalty on the very disputed turnover is available in the books of account.

(vii) Whether in the facts and circumstances of the case the Appellate Tribunal is justified in confirming the levy of tax on the disputed turnover which was determined without providing details of the supply particulars received from the Oil Companies which would amount to the violation of principles of natural justice and against the assessment procedure under the Act."

6. In the tax case revisions filed by the State, the following substantial questions of law have been raised.

T.C.(R) No.114 of 2018:-

(i) Whether the impugned order of the first appellate authority in A.P.No.216/2014 dated 4.5.2015 is sustainable in law?

(ii) Whether deletion of equal time addition and the penalty by the Appellate Deputy Commissioner (CT) is proper in law?

(iii) Whether there was any error apparent on record in the order passed by the Tribunal in STA 180/2016 requiring rectification?"

(i) Whether the impugned order of the first appellate authority in A.P.No.216/2014 dated 4.5.2015 is sustainable in law?

T.C.(R) No.115 of 2018:-

"(i) Whether the impugned order of the first appellate authority in A.P.No.217/2014 dated 30.3.2015 is sustainable in law?

(ii) Whether deletion of equal time addition and the penalty by the Appellate Deputy Commissioner (CT) is proper in law?

(iii) Whether there was any error apparent on record in the order passed by the Tribunal in STA 181/2016 requiring rectification?"

T.C.(R) No.116 of 2018:-

"(i) Whether the impugned order of the first appellate authority in A.P.No.154/2015 dated 04.05.2015 is sustainable in law? (ii) Whether deletion of equal time addition and the penalty by the Appellate Deputy Commissioner (CT) is proper in law?

(iii) Whether there was any error apparent on record in the order passed by the Tribunal in STA 182/2016 requiring rectification?"

T.C.(R) No.155 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.84,65,244/-.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.156 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.20,89,613/-.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.157 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.98,42,348.58.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.158 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.6,23,354.79.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.159 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.1,01,87,278/-.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the

respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.160 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.82,20,376/-

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant

the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.161 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.60,91,630.79.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.162 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability

thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.82,38,750.96.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.163 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.90,39,942.80.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer

failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.164 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.24,40,378.25.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant

the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.165 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.76,563.66.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

T.C.(R) No.166 of 2018:-

"(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.

(ii) Whether the Appellate Tribunal failed to note that the respondent in spite of service of pre assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability

thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.4,79,836/-.

(iii) Whether the Learned Presiding officer failed to consider that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the Tax payers will indulge in similar act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the Learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of dishonest suppression of turnover."

7. With the consent of the learned counsel on either side, we take up T.C.(R) No.30 of 2018 as the lead case.

8. The assessment proceedings in this case is under the provisions of the Pondicherry General Sales Tax Act, 1967 (hereinafter referred to as "the PGST Act").

9. The assessee is a dealer in petroleum products in Mahe and they had filed the return for the relevant assessment years declaring their total and taxable turnover. It appears that the Intelligence Wing of the Commercial Taxes Department made certain verifications and it came to the notice of the Department that there is huge suppression of taxable turnover by the dealer. Therefore, a pre-assessment notice, dated 07.10.2008, was issued proposing to revise the assessment under Sections 13(2) and 13(3) of the PGST Act read with Section 81 of the PVAT Act.

10. It is not in dispute that the dealer was granted sufficient time to file his objections and ultimately, the dealer had filed his objections and one such sample objection was placed before this Court for our perusal wherein, the dealer objected that the pre-assessment notice has been issued merely

based on the supply details said to have been received from the Oil Corporation (HPCL Limited, Calicut) without verifying the assessee's account and their earlier notice dated 17.03.2008.

11. Further, it was stated that in the statement of supply details sent along with the pre-assessment notice, most of which do not relate to the dealer's business and therefore, they are objecting to the proposal. Referring to certain decisions of the Hon'ble Supreme Court, the dealer stated that opportunity to cross verify the third party in person, along with their accounts has to be given, and in their case, no such opportunity was given as required by law. Therefore, the dealer requested an opportunity before taking a final decision to cross verify the third party (Oil Corporation) in person, along with their accounts to establish the correctness and completeness of their transaction. The dealer reiterated that the returns and accounts submitted by them are correct and complete and it requires no enhancement as proposed in the pre-assessment notice. The Assessing Officer considered the objections and was not convinced with the same, rejected the objections and confirmed the proposal in the pre-assessment notice.

12. The assessee filed appeal before the Appellate Assistant Commissioner, Commercial Taxes Department, Pondicherry. The grounds, which were urged before the Assessing Officer, were reiterated before the appellate authority but, in a more legal manner, in the sense that, they stated that, when evidence is collected by the Assessing Officer by way of third party evidence, this evidence has to be sustained, the Assessing Officer should have furnished all documents to the dealer, he should have summoned the officers of the Oil Corporation, permitted cross examination of the parties. Further, they stated that the burden of proof is on the Assessing Officer to plead and prove that there was an act of escaped turnover. They cannot shift the burden on the dealer.

13. Further, there is no statutory presumption attached to the evidence collected by the Assessing Officer, who is only a quasi-judicial authority in the matter of assessment or re-assessment. Before accepting the materials as evidence, the Assessing Officer is bound to prove the veracity of the materials and the evidentiary value of the same, and for such purposes, it is necessary to examine the person, who produced such evidence and the assessee should be given an opportunity to cross examine such person. Further, that order imposing penalty is per se illegal. There is no willful suppression of turnover. Penalty is not automatic and therefore, the question of imposing penalty does not arise. The first appellate authority was not convinced with the stand taken by the dealer and by order dated 09.02.2017, dismissed the appeal. Against the said order, the assessee preferred appeal before the Tribunal. The Tribunal

proceeded to decide as to whether the order passed by the first appellate authority is liable to be set aside or not. By the impugned judgment, the Tribunal upheld the orders passed by the Assessing Officer and the first appellate authority, so far as the issue relating to payment of tax, that is, the findings on the turnover of the dealer. However, with regard to the penalty, it took note of the submissions of the dealer and reduced the penalty by 25% from what was imposed on the dealer. We may note that insofar as the cases arising under the PGST Act are concerned, the penalty was reduced to 75%.

14.Mr.R.Natarajan, learned counsel appearing for Mr.A.N.R.Jayaparathap, learned counsel for the petitioner, submitted that the request made by the dealer for cross examination was not rejected by the Assessing Officer, but, he observed that such a claim is vague. However, that should not have been the approach of the Assessing Officer, especially in the light of Section 58 of the PGST Act, which gives powers to summon witnesses and produce documents and such power is exercisable not only by the Assessing Officer, but also by the appellate authority including the Appellate Tribunal. Thus, it is submitted that the Assessing Officer abdicated his powers conferred under the statute. The learned counsel referred to the grounds raised by the dealer before the first appellate authority which, we have noted in the preceding paragraph.

15.Further, it is submitted that the first appellate authority has miserably erred in not assigning any reason for its conclusion and the learned counsel referred to the findings recorded in paragraph 18 of the order of the first appellate authority. Further, it is submitted that the first appellate authority has committed a serious error in coming to a conclusion that penalty is automatic and there is no requirement to establish mens rea. This interpretation, according to the learned counsel, is erroneous. Further, it is submitted that the dealer approached the Tribunal, once again such request was made by the dealer, which was brushed aside by the Tribunal and not considered and the Tribunal also failed to exercise its jurisdiction under Section 58 of the PGST Act.

16.Further, it is submitted that the Tribunal having come to the conclusion that the findings of the Assessing Officer and the first appellate authority are without reasons, ought to have allowed the appeal filed by the assessee and vacated the entire penalty imposed on the dealer. It is further submitted that the request for cross examination ought to have been given and the officers of the HPCL should have been summoned invoking the power under Section 58 of the PGST Act or under Section 72 of the PVAT Act, and the authorities below and the Tribunal failed to exercise power, which is erroneous.

17.Further, it is submitted that the finding of the authorities that penalty is automatic is incorrect, as mens rea has to be established. In this regard, the learned counsel referred to the decision of the Hon'ble Full Bench of this Court in the case of The State of Tamil Nadu vs. Tvl. Nu-Tread Tyres and Ors., 2006 (4) CTC 450.

18.With regard to the need for providing the right to cross examine, reliance was placed on the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu vs. A.N.S.Guptha and Sons, [2011] 38 VST 45 (Mad); decision of the Supreme Court in Andaman Timber Industries vs. Commissioner of C. Ex., Kolkata-II, (2015) 324 ELT 641 (SC); decision of this Court in Vijayaraj Surana vs. Commissioner of Customs, Chennai-III, 2016 (340) ELT 308 (Mad.); decision of the High Court of Orissa in Babulal Agrawal vs. State of Orissa represented by Commissioner of Sales Tax, (2009) 26 VST 565 (Orissa); and the decision of the Hon'ble Supreme Court in State of Kerala vs. K.T.Shaduli Grocery Dealer etc., (1977) 2 SCC 777.

19.With regard to imposition of penalty, the learned counsel referred to the decision in the dealer's own case (M/s.Surya Service Station vs. Union of India and Another) in Writ Petition Nos.4385 to 4392 of 2009 dated 20.12.2013 wherein, the entire penalty was vacated.

20.It is further submitted that, it is no doubt true that before the Tribunal, the dealer accepted to pay the tax but, nevertheless, the first appellate authority and the Tribunal ought to have considered as to whether the denial of cross examination of the officials of the Oil Corporation was proper and without embarking upon such an exercise, the authorities ought not to have rejected the case of the dealer. Further, it is submitted that none of the three authorities had assigned any reasons in their order and non-assigning of reasons renders the order as nullity. In support of such contention, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of The Commissioner of Income-tax, Bombay vs. Walchand and Co. (Pvt.) Ltd., Bombay, AIR 1967 Supreme Court 1435. On the above grounds, the learned counsel sought to set aside the orders passed by the Tribunal.

21.Mrs.N.Mala, learned Additional Government Pleader (Puducherry) appearing for the respondent in the revision cases filed by the dealer and for the petitioners in the revision cases filed by the State submitted that, while considering the power exercisable by a statutory authority, it is necessary to examine the source of power under the specific statute and this is more so in fiscal statutes, since strict interpretation has to be given. Further, it is submitted that the law has to be applied to the facts and circumstances and not vice versa and

the settled principle is that law will follow the facts.

22.Further, by referring to the factual situation, it is submitted that documents relied on, namely, the C-Forms and the supply details, etc., were furnished along with the pre-assessment notice to the dealer and the C-Form being a document to be generated by the dealer, the question of providing cross examination of the officials by the Assessing Officer does not arise. Thus, the burden of proof is on the dealer to show that the returns filed by them were correct and reflected the true sales turnover and if the dealer fails to prove the same by producing necessary evidence, then the dealer has to fail and the burden of proof is not on the Assessing Officer.

23.Further, by referring to the dates, it is submitted that sufficient opportunity was granted except in three cases, where assessments were completed within 1½ months of the pre-assessment notice, in all other cases, the assessment was completed only after one year after the pre-assessment notice, affording sufficient and reasonable opportunity to the dealer. Further, it is submitted that exercise of power under Section 58 of the PGST Act would arise only when the dealer is able to convince the authority that a dispute has arisen which, the dealer has not been able to do hence, the question of exercising power under Section 58 would not arise.

24.Further, it is submitted that there were two types of revision of assessments under the PGST Act; one under Section 13 (3); and the other under Section 18(3). The learned counsel has referred to both the provisions and would submit that the question of willful non-disclosure would not be attracted under Section 13(3) of the PGST Act and therefore, the penalty imposable is mandatory and the discretion of the Assessing Officer is only with regard to the quantum. So far as the cases, which were dealt with in W.P.Nos.4385 to 4392 of 2009 are concerned, those were revisional assessments under Section 18(3) of the Act.

25.Further, it is submitted that prior to imposing penalty, notice was given, that is, there was a proposal in the pre-assessment notice and the dealer did not utilize the opportunity and having not done so, he cannot now question that the revision of assessment as being in violation of principles of natural justice. Further, no prejudice was caused to the dealer, since the documents were relatable to them and it is their duty to disprove that the assessment is wrong and they having failed to do the same, the authorities were right in rejecting the contentions of the dealer. Further, in the earlier round of litigation in W.P.Nos.4385 to 4392 of 2009, the dealer had straightaway approached this Court and the evidence could not be examined and in the instant case, the C-Forms were examined and

found to be signed by the dealer in all pages. Furthermore, it is the presumption that the details furnished by the Oil Companies are correct, since they are Government of India enterprises and there is no reason for them to furnish false information. Therefore, it is for the dealer to establish his innocence and having failed to do so, it has been established that there is willful suppression warranting full penalty and therefore, the Tribunal was not justified in granting partial relief to the dealer and that too, it has not recorded the reasons as to why it has reduced the penalty imposed by the Assessing Officer.

26. Further, it is submitted that the decision in the case of K.T. Shaduli Grocery Dealer etc., (supra) would support the case of the Department in the sense that there can be no straight jacket principles of natural justice and each case has to be considered on its own merits. On the above submissions, the learned counsel sought to sustain the orders passed by the Assessing Officer.

27. By way of reply, Mr. R. Natarajan would submit that the entire re-assessment process was initiated by the Investigation Department and if that is so, then there can be no presumption especially while imposing penalty, as penalty cannot be presumed, it has to be established, mens rea has to be established and without establishing mens rea as held by the Hon'ble Full Bench in the case of Tvl. Nu-Tread Tyres and Ors., (supra), no penalty could have been imposed.

28. We have heard the learned counsels for the parties and carefully perused the materials placed on record.

29. The sum and substance of the challenge to the orders of the Tribunal by the dealer in these revisions is on the following grounds:

(i) The dealer was not afforded an opportunity of cross examination of the officials of the HPCL;

(ii) The Assessing Officer, without establishing mens rea, could not have imposed penalty on the dealer;

(iii) The Assessing Officer as well as the first appellate authority and the Tribunal did not give any reason to support its conclusion. Therefore, the orders are ab-initio void;

(iv) The authorities below and the Tribunal lost sight of the fact that the burden of proof is on the Department and without exercising their statutory powers conferred under Section 58 of the PGST Act, rejected the plea of the dealer.

(v) The grounds canvassed by the State to sustain the assessment orders is by contending that willful suppression has been established; the burden of proof is on the dealer and it does not shift to the Department; the dealer did not utilize the opportunity granted; there is no violation of principles of natural justice and the order levying penalty is justified,

otherwise it would be condoning the willful act of the dealer and there is no room for any sympathy in such matters;

30. First, we examine as to whether the dealer was justified in contending that they should be given an opportunity to cross verify the details furnished by the Oil Corporation (HPCL), cross examination of their officers, before the assessment proceedings could be completed. The dispute in the instant case revolves around the details furnished by the dealer in the Form C declarations and the details of the turnover furnished by the dealer in their returns. The Intelligence Wing of the Department came to know that there is large scale suppression of the taxable turnover by the dealer. This has led to the issuance of the pre-assessment notice. It is seen that along with the pre-assessment notice, the copies of the supply details, the copy of the C-Forms received from HPCL and the other related information were fully furnished to the dealer. Therefore, the dealer had to submit their objections as to why the proposal of the Department to revise the assessment is not proper. It is important to note that Form C declaration is issued in a statutory form as prescribed under Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. The statutory form has an original, a duplicate and a counterfoil, that is, a Triplicate document.

31. Be it noted that Form C declaration is a "form of declaration" which would mean that it is a solemn statement made by the dealer to the Department. The name and address of the selling dealer and the name of the State have to be mentioned. The particulars of the bill, cash memo, delivery date, number and amount have to be given and more particularly, the counterfoil has to be retained by the purchasing dealer. In the instant case, the petitioner's/dealer's duplicate to be retained by the selling dealer, i.e., HPCL and original to be furnished to the prescribed authority in accordance with the rules framed under Section 13(4)(e) by the appropriate State Government. Thus, the documents, namely, the form of declaration in Form C is a document generated by the petitioners/dealers. Therefore, whatever statement made in such declaration will fully bind the dealer. In such circumstances, there is a clear estoppel against the dealer to contend something contrary to the Form C declaration. The theory as propounded by the dealer that blank forms were handed over to the HPCL is a false statement. The documents were verified by the first appellate authority and there is a clear finding to the effect that the dealer has signed all pages of the declarations. Thus, the dealer, at the very first instance, has come out with the false statement. As mentioned above, the counterfoil has to be retained by the petitioner/dealer and therefore, they cannot feign ignorance of the details contained therein.

32. What is important to note in the instant case is that there is not even a single averment touching upon the merits of the revision of assessment except to say that some of the supplies are not related to their business. This statement has to be out rightly rejected as being vague. Furthermore, in the reply to the pre-assessment notice, the dealer did not dispute the issuance of the Form C declaration. Therefore, it is too late for the dealer to contend that they are not aware of the details contained in the Form C declaration and if they still persist to contend so, even before others, their action has to be strongly deprecated, as they are perpetuating false representation. The Oil Corporation, HPCL has not only given the copy of the C-Form retained by them, which in fact, was issued by the dealer to them, but also has given the copies of the delivery details. Therefore, if the petitioner/dealer was a rightful person, the first step he should have taken is to verify these details with his selling dealers, namely, HPCL, who has granted dealership to do such business. Instead of adopting such a modus operandi, the petitioner/dealer has proceeded at a tangent by blaming the State Corporation without any details by making vague allegations, which cannot be appreciated. Thus, the fundamental basis on which the dealer has built up his case has crumbled because of the above fact that the Form C declaration is a solemn form made by the petitioner/dealer and is estopped from contending otherwise. Therefore, the initial burden has been fully discharged by the Department and it is for the petitioner/dealer to disprove the allegation against them and prove their innocence.

33. As rightly pointed out by the learned Additional Government pleader, no iota of evidence has been produced by the dealer to dislodge his own declaration made in Form C. Thus, we are of the clear view the question of applying Section 101 of the Indian Evidence Act, 1872 would not arise. In fact, such argument was advanced before us by the learned counsel for the dealer drawing support from the order passed in W.P.Nos.4385 to 4392 of 2009. In the said case, the Court was examining the correctness of an assessment order passed under Section 18(3) of the PGST Act and taking note of the submission of the dealer that they had given blank C-forms to the Oil Corporation, the Court proceeded to analyse the case and held that Section 101 of the Evidence Act would stand attracted and the burden of proof is on the assessing authority and therefore, the assessing authority was not correct in denying the request made by the petitioner for cross examination. We do not subscribe to the view taken in the said order for more than one reason.

34. Firstly, the effect of the Form C declaration was not analysed in the said decision. More importantly, it was not placed before the Court and that the Form C declaration, which is a document generated by the dealer, contains seal and

signature, certified by his Assessing Officer. The declaration is in a statutory form. Therefore, what was said in that is presumed to be correct and valid. The person, who contends otherwise, has to establish the same. Therefore, at no point of time, the burden of proof was on the Department. Therefore, the Court proceeded on a wrong premise, with regard to cross verification etc. Furthermore, the problem had escalated, because the petitioner had directly approached the High Court by way of writ petitions challenging the revision of assessment. Therefore, there was no occasion of the appellate authority or the Tribunal to examine the document, namely, the Form C declaration. Had such an exercise be done, probably, the result in the previous set of cases in W.P.Nos.4385 to 4392 of 2009 dated 20.12.2013 might have been different.

35. Furthermore, we would state that the Department had produced the original of the Form C declaration, that is, original insofar as the selling dealer is concerned, namely, HPCL, though it may be a duplicate, in the true sense. Thus, this is a primary evidence produced by the Department and there is a presumption to its validity and the person who challenges the same has to produce rebuttal evidence. If thus having not been done, the question of providing an opportunity of cross examination or cross verification of details and that to be done by the Department are all arguments which are stated to be out rightly rejected. Even assuming, without admitting the case of the petitioner, that blank forms were handed over to the HPCL, then the case of the petitioner would be hit by Section 106 of the Indian Evidence Act, which speaks of burden of proving an act especially within its knowledge. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Therefore, even on that score, the petitioner cannot wriggle out of their obligation. Thus, in our considered view, the decision in W.P.Nos.4385 to 4392 of 2009 does not lay down the correct legal position. It is not clear as to why the Department had not proceeded further in the matter, especially when they are contesting the present proceedings by filing tax case revisions to sustain the orders passed by the assessing authority. Thus, the first contention, regarding the requirement for cross examination, has to necessarily fail and accordingly, decided against the dealer.

36. So far as the decisions, which were relied on, more particularly, the decisions in A.N.S.Guptha and Sons (supra) and Vijayaraj Surana vs. Commissioner of Customs, Chennai-III, (supra) are concerned, the documents were either documents produced by the dealers such as sale bills etc., or documents secured from third parties. In the said context, the Court had to examine as to whether opportunity of cross examination should be given. Such a contingency does not arise in the case on hand. Therefore, the decisions are clearly distinguishable.

Equally, is the decision of the Hon'ble Supreme Court in Andaman Timber Industries (supra) and in the said case also, it was a third party unlike the case on hand where it is a document or a solemn declaration furnished by the dealer.

37.Next, we move on to the contention that no reasons were given by the authorities as well as the Tribunal. We wholly disagree with such a contention after going through the orders passed by the Assessing Officer. Admittedly, an Assessing Officer cannot be expected to write a judgment or a judicial order. We find that the Assessing Officer has analysed the objections given by the dealer and assigned reasons in paragraph 4 of his order. Therefore, we do not agree with the submission that the order is devoid of merits.

38.Examining the order passed by the first appellate authority, we find that the first appellate authority has also assigned reasons, though not very cogent but, yet in his understanding, he has assigned reasons, with regard to why the penalty should be sustained. In fact, the first appellate authority has pointed out that the dealer has signed in every page of Form C declaration and its annexures with details of invoice wise purchase of petroleum products for re-sale in Mahe. Thus, we find that the reasons have been assigned by the first appellate authority. Coming to the judgment of the Tribunal, the Tribunal, being the last fact finding authority, is required to examine as to whether the decision of the first appellate authority and the Assessment Orders were just and proper. In our considered view, this exercise has been undertaken by the Tribunal. The reasons have to be culled out from various paragraphs of the judgment because, each paragraph commencing from paragraph 8 of the judgment, not only gives the finding of the Tribunal, but also prefaces the contention advanced by the dealer and the contention advanced by the Government Pleader. If we examine in that angle, we find the judgment of the Tribunal also to be a reasoned judgment. Therefore, we do not agree on the said contention of the dealer.

39.While discussing the need for cross examination, we have also discussed as to why the burden of proof has always remained with the petitioner. We reiterate the same and hold that the burden of proof had remained with the dealer and it is not for the Department to establish anything in the matter, as it is a document generated by the dealer.

40.The final aspect would be whether penalty levied by the Assessing Officer requires interference or not. The arguments of the learned counsel for the petitioner is that mens rea is required and in this regard, placed strong reliance in Tvl. Nu-Tread Tyres (supra), which was a case arising under the provisions of the Central Sales Tax Act, 1956.

41.The Hon'ble Full Bench pointed out that the expression "falsely represents" clearly shows that the element of mens rea is necessary component of the offence and in the absence of mens rea, resort to penal provision would not be proper, unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provisions or wilful disregard. The Hon'ble Full Bench had referred to the decision in the case of Vijaya Electricals vs. State of Tamil Nadu, (1991) 82 STC 268, wherein, the dealer, who knew what was contained in the certificate of registration uses the C Form declarations in respect of goods not mentioned in the certificate and the representation made by the dealer was false. The Court noted this decision and held that it is sufficient to indicate that mens rea has application in tax default cases.

42.Admittedly, in the instant case also, the issue revolves around a Form C declaration and if according to the dealer, he had submitted the blank forms, it would amount to an offence. However, the first appellate authority found that there was no blank forms but, signed by them in all pages including annexure along with invoice bills. If that is so, then the details furnished therein should obviously tally with the return filed by the dealer. If there is discrepancy in that, the burden is on the dealer to disprove the same, more particularly, when the allegation is there is large scale suppression of taxable turnover. Thus, mens rea is writ large on the face of the record. There is no further proof required to establish the blameworthy conduct of the dealer. Though we may not be fully justified in examining the past conduct of the dealer, especially when they had succeeded in the earlier writ petitions in W.P.Nos.4385 to 4392 of 2009, which also arose out of the same type of transaction in the previous years and the Department having not filed an appeal yet, this would be a clear indicator as regards the modus operandi of the dealer. Thus, we safely conclude that there was sufficient mens rea on the part of the dealer and this can be gathered from their conduct and the Assessing Officer was justified in imposing penalty, as confirmed by the first appellate authority.

43.However, we are not convinced with the manner in which the Tribunal had interfered with the order passed by the first appellate authority by reducing the penalty merely, on the ground that the dealer accepted and paid the tax. There can be no concession on this ground and it is a clear case of misplaced sympathy. If the dealer has not paid the correct rate of tax, it is illegal. If the dealer has collected tax and not remitted to the Department is all the more illegal. Therefore, there is no case for exercising any sympathy in such cases more particularly, when the transactions are all financial transactions especially dealing with the petroleum products, which can be handled only by licensed dealers such as the

petitioner.

44.Further, the Court can take judicial notice of the fact that the dealership is in an Union Territory, the dealership granted to the petitioner is a Union Territory adjoining other States, where prices of fuel is higher than that of the Union Territories and it is common knowledge that these petrol pumps in Union Territories abutting other States have a huge turnover. Furthermore, we find that though the dealer has been repeatedly stating that cross verification should have been done, cross examination should have been provided, it has not stated as to how they were prejudiced in not allowing the same. In fact, the entire details were furnished along with the pre-assessment notice. It is not the case of the dealer that they wanted some more documents, which the Department did not furnish. No such request was made by the dealer. As pointed out by us earlier, the documents, namely, the C-Form declarations, which were put to the petitioner, were confronted as a document/declaration signed by the dealer.

45.Thus, we find that there is no error in the decision making process as done by the Assessing Officer and such order was rightly affirmed by the first appellate authority as well as by the Tribunal. However, we do not subscribe to the order passed by the Tribunal in interfering with the penalty and reducing the same, considering the hard facts of the cases on hand.

46.In the result, the Tax Case Revisions filed by the petitioners/dealers are dismissed and the questions of law framed in those revisions are answered against the petitioners.

47.For the reasons assigned in the preceding paragraphs, the Tax Case Revisions filed by the Department are allowed and the order passed by the Assessing Officer is restored and accordingly, the substantial questions of law are answered in favour of the Revenue. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rna/abr

To

1.The Value Added Tax Appellate Tribunal, Puducherry.

2. The Appellate Assistant Commissioner (CT)
Commercial Tax Department, Puducherry.

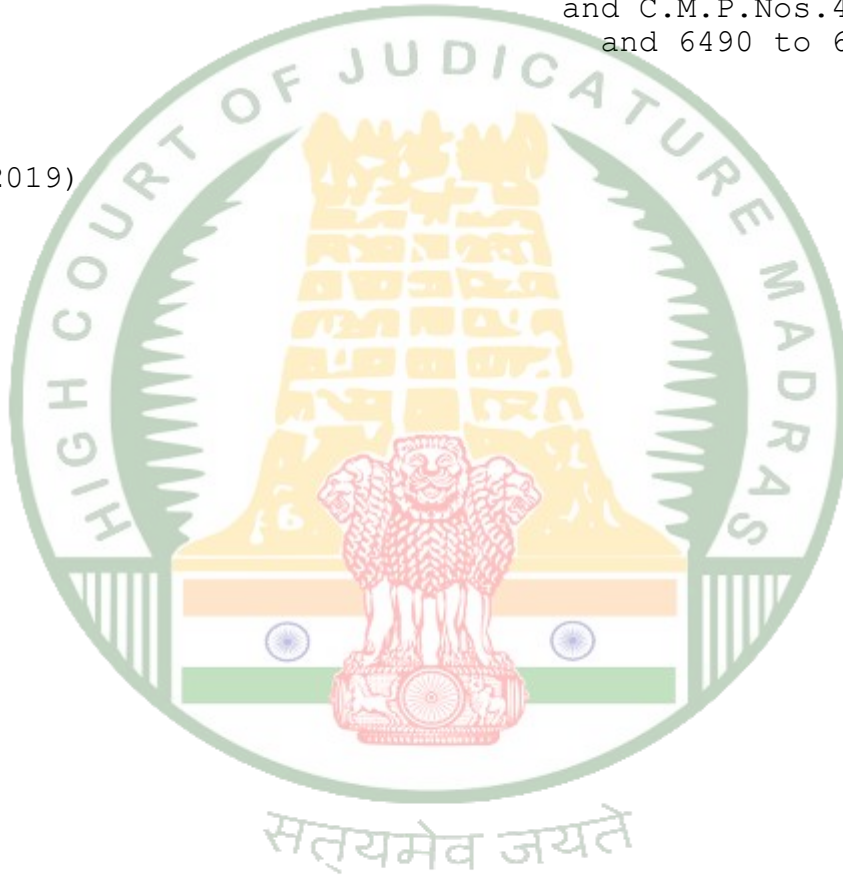
3. The Commercial Tax officer, Mahe.

+1 CC to Govt. Pleader for Puducherry, sr No.s 82418 to 82432.

+1 CC to Spl. Govt. Pleader(T) sr 82324.

T.C.(R) Nos. 29 to 31, 66 to 69
and 99 to 103 of 2018
& 114 to 116 and 155 to 166 of 2018
and C.M.P.Nos.4660 to 4662
and 6490 to 6493 of 2018

BR(CO)
SP(11/01/2019)



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