IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.(R).No.42 of 2018

The Deputy Commissioner
(Commercial Taxes),
State of Tamil Nadu,
Coimbatore Division,
Coimbatore - 18 .. Petitioner

v.

Tvl.Vishnulakshmi Mills (P) Ltd.,
No.99, Sasthri Road,
Ramnagar,
Coimbatore. .. Respondent

Prayer: Tax Case Revision is filed under Section 38 (1) of Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (AB) Coimbatore, dated 21.01.2002 and passed in the Coimbatore Tribunal State Appeal No.51/1998.

For Petitioner : Mr.V.Haribabu
Additional Govt. Pleader (Taxes)

ORDER

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

Tax Case Revision is filed to revise the order of the Sales Tax Appellate Tribunal (AB) Coimbatore, dated 21.01.2002, made in Coimbatore Tribunal State Appeal No.51/1998.

2. Short facts leading to the Tax Case Revision are that Tvl.Vishnu Lakshmi Mills dealers in Cotton yarn, Coimbatore, respondent herein, was originally assessed on a total and taxable turnover of Rs.3,57,09,410/- and Rs.3,52,76,415/- respectively, as against the reported total and taxable turnover of Rs.6,47,81,973/- and Rs.3,32,29,067.74 respectively, by the Commercial Tax Officer, Ramnagar Circle, Coimbatore, vide proceedings dated 25.06.1997. Against which, the respondent has filed Appeal No.304/1997 and vide order dated 16.10.1997, the Additional Appellate Assistant Commissioner (Commercial Taxes), Coimbatore, has allowed the said appeal.

3. Being aggrieved by the same, the State has preferred Appeal

No.51 of 1998, before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore. After considering the facts and circumstances of the case, the Tribunal, vide order, dated 21.01.2002, dismissed the appeal, as hereunder:

" 4. We have heard the arguments of both the sides and perused the connected records. The learned Additional State Representative has relied on the order of the Assessing Officer and argued to restore the same. The Assessing Authority assessed the turnover of Rs.25,10,000/- and restricted the claim only to a turnover of Rs.3,93,632/-, as the assesses have proved the sufferance of tax only to the purchase of textile machinery, he disallowed the claim of second sales of machinery at Rs.20,77,005/-.

5. The learned first appellate authority has allowed the claim on the second sales of machinery for Rs.20,77,005/-

"The Assessing Authority has held that the appellants had purchased 8 Nos. of Textile Machinery for Rs.3,93,632/-in 1986 and 1990 but they had sold these goods for Rs.25,10,000/-, the gross profit was abnormal, only because they had used the spare purchased within and outside the sale the value of the textile machinery has increased. In the objection to the pre-assessment notice, the appellants had held that their profit should not be assessed to tax, that they had purchased the goods locally and these goods had suffered tax. The Assessing Authority had held that the appellants have proved sufferance of tax only for Rs.3,93,632/- and that it was unbelievable that it could be sold for Rs.25,10,000/-. He has assessed the difference as turnover.

A verification of the fixed asset sales details filed by the appellants reveals that they have purchased the machinery from M/s Gnanambikai Mills Limited, Coimbatore, and the Tuticorin Spinning Mills Limitied, Tuticorin. These purchases have suffered tax at 8% during the year 1986 at the hands of the Tuticorin Spinning Mills Limited and at 4% during the year 1990 at the hands of M/s Ganambikai Mills Limited. The appellants have shown depreciation value of the machinery and the written down value is very less. They have sold these spinning frames to M/s Veerajoti Textiles Mills Private limited, Thekkur, and Sree Shivamalai Andavar Spinning Mills, kangayam for Rs.3,50,000/- and for Rs.21,60,000/-. In view of the above the Assessing Authority is not correct to restrict the second sale claim. He has not proved with any records that they had sold some machinery frames other than those purchased locally. As the written down value is very less, the profit margin is very high. As rightly contended by the appellants, the profit cannot be assessed. What has been sold is only the locally purchased tax suffered goods. The appellants have also effected first sale of a machinery and for this also the sale value is very high as compared to the written down value. In view of the above, I hold that the Assessing Authority is not correct in restricting the second sales claim and assessing the differential value. The written down book value, the cost price and the sale value cannot be compared unless it is proved with records that the machinery has undergone a sea change and it has not suffered tax earlier. With the above observation, I set aside the assessment made and allow the appeal."

6. The learned Authorised Representative for the respondents would argue that the respondents during the year under consideration had effected sale of old textile machineries and the difference between the book value of the machinery and sale price have been admitted as profit on sale of machineries. The machinery sold were both taxable within the State and second sales in the hands of the Respondents. The Assessing Authority has restricted the exemptions claimed towards second sales of machinery amounting Rs.25,10,000/- to Rs.4,32,995/- and brought the difference of Rs.20,77,005/- to tax, he allowed deduction for Rs.4,32,995/- only taking into consideration the purchase cost an adding gross profit at 10%. It is further argue that the Appellate Assistant Commissioner after going through all the records and accounts and considering the facts, deleted the disallowance made by the Assessing Authority.

7. The appellant-State would state the following in their grounds of appeal:

a. The corresponding sales bills issued by the respective mills have not been produced by the appellants to prove that the very same machineries purchased by them have been sold as second sales.

b. No proof for the sufferance of tax at an earlier stage in the State for the machineries sold under the caption Second sales was produced.

c. It is not free from doubt whether any other parts like motor and other spares have been sold along with the machinery since the machineries worth Rs.80,361/- was sold for Rs.25,10,000/-

d. The Textool 5A frames machines of four sets were found to have been purchased on 22.09.1986 and reflected in a separate ledger folio and necessity of such thing has not been examined by the Appellate Assistant Commissioner of Commercial Taxes.

8. Against the above grounds of Appeal, the respondents would submit the following:-

i. The respondents had filed the details of sales of machinery both taxable and non-taxable. They had also furnished the copies of the purchase bills to prove the sufferance of tax in the earlier sale within the State. The Assessing Authority has detailed this fact and furnished the details of purchase in his order itself in page 2 and 3. Hence it is not correct to say that the respondent had not filed the copies of the bills. The respondents had proved beyond doubt that the anterior sale had suffered tax within the State and the sales in their hands are only second sales;

ii. The respondent had filed all the relevant copies of purchase bills and also sale bills to prove that what had been purchased has been sold with or without accessories as the case may be. Thus, it is evident that no accessories or other parts like motors and other spares had been sold.

iii. The respondents being a company is statutorily required to maintain a register called “Fixed Assets Register” which contains the particulars of purchase cost of machinery, depreciation claimed each year the details of sales if any and the value thereon. The respondents while filing details for the claim of second sales have furnished list of machinery sold and the ledger folio noted therein relate to the folio number off. The "Fixed Assets Register" and no separate accounts have been kept for purchase of each and every machinery in the financial ledger.

The above facts with records have been verified the ld. Appellate Assistant Commissioner at the time of appeal and on perusal of the connected records only, the claim was allowed.

9. As rightly contended by the respondents, the profit cannot be assessed and what has been sold by the appellants are only locally purchased tax suffered goods. The respondents have also effected first sale of machinery and for this also the sale value is very high as compared to the written down value. The learned Authorised Representative for the respondent would argue that the case law of C.Pandian Vs. State of Tamil Nadu reported in 105 STC 449 relied on by the appellant-State is not applicable to the case on hand. On facts and circumstances, that the Assessing Officer refers to a case which the dealer had claimed exemption towards second sales but failed to produce necessary evidence and records for the same and also failed to prove the sufferance of tax in the anterior sale. Whereas, in the case on hand, the facts and circumstances are entirely different and distinct in which the respondents have proved

with records the sufferance of tax in anterior sales within the State. The connected evidential records were produced before the learned Appellate Assistant Commissioner and only fair and thorough perusal of the same, he has allowed the claim of the respondents as second sales of machinery. Therefore, considering the facts and circumstances of the case on hand and in as much as the learned first appellate authority has allowed the turnover after the verification of the connected records and other related materials, we are of the view that the order passed by the learned Appellate Assistant Commissioner in allowing the appeal is found to be in order and which calls for no interference.

In the end, the State Appeal stands dismissed."

3. Being aggrieved by the abovesaid order, the State has filed the instant Tax Case Revision.

4. Mr.V.Hari Babu, learned Additional Government Pleader (Taxes), submitted that the Tribunal has failed to note that the Assessing Authority had observed that considering the purchase and sale value, the gross profit worked out to Rs.21,16,368.00, which was abnormal and it is seen that the dealers have purchased textile machinery spares, both within the State and outside the State and used them with the textile machinery and therefore, submitted that the value of textile machinery

increased.

5. He also submitted that since the parts used with the textile machinery is higher than the purchase value, the so called textile machinery was treated as newly assembled machinery and when the second sales turnover of Rs.25,10,000/- was disallowed and brought to tax as first sales of textile machinery and thus, the action of the assessing authority in this regard, is quite in order.

6. Learned Additional Government Pleader (Taxes), submitted that the Tribunal has failed to note that the dealers have claimed that they effected second purchase of machinery form Tvl. Tuticorin Spinning Mills Ltd., and Tvl.Gnanambigai Mills Ltd., as early as in 1986 and 1990 respectively, but the corresponding sales bills issued by the respective mills were not produced to prove that the very same machineries purchased were sold by them as second sales. He therefore submitted that the burden of proving the transaction lies with the dealers, as per Section 10 of the TNGST Act, 1959, which the dealers have failed to do so and hence, the assessment made in this case, is quite justifiable.

Heard the learned Additional Government Pleader (Taxes) and perused all the materials available on record.

7. Section 10 contemplates that for the purpose of assessment of tax under the Act, the burden of proof that any transaction or turnover of a dealer is not liable to tax shall lie on such dealer. When exemption of tax on second sales is claimed by the assessee, it is for the assessee to establish that the transactions were bona fide on two aspects, namely, (i) that the purchases were made by the assessee and the goods so purchased had suffered tax already and (ii) that such purchases were made from the dealers whose registration were in force on the date of purchases.

8. In the given case, the respondent had proved with records, the sufferance of tax was in anterior sales within the state. The first appellate authority, after due verification of the connected records and other related materials, allowed the claim of the assessee, as second sales of machinery and the Tribunal, upon due consideration of the facts, has concurred.

9. Material records have been verified. On facts, both the authorities have applied the principles of law, as regards second sale of

machinery. We do not find any perversity, warranting interference.

10. For the foregoing reasons, the tax case revision petition is dismissed. No costs.

[S.M.K., J.] [V.B.S., J.]

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Index : Yes\No

Internet : Yes\No

dm/skm

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