IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Revision) Nos.52 to 54 of 2014

Tvl.Kaseem Agencies
8/9,1st Floor,
Chairman Shangumugam Street,
West Shanmugapuram,
Villupuram. ...Petitioner in all Petitions

-vs-

State of Tamil Nadu
Represented by
The Joint Commissioner (CT)
Vellore Division, Vellore. ... Respondent in all Petitions

Tax Case Revisions filed under Section 38 of the TNGST Act, 1959,against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai - 600 104 in S.T.A.Nos.74, 73 and 75/2013, dated 26.03.2014 respectively against the order dated 31.07.2012 made in Appeal No.5/12 to 7/12/VAT on the file of the Appellate Deputy Commissioner (CT) FAC, Cuddalore for the Assessment Year 2007-08, 2008-09 and 2009-10, against the order dated 27.01.2012 made in TIN 33174701588 on the file of the Assistant Commissioner of (CT), Villupuram-II for the assessment year 2007-08, 2008-09 and 2009-10.

For Petitioner : No appearance

For Respondent : Mr.V.Haribabu
Additional Govt.Pleader

C O M M O N O R D E R

(Order of the Court was delivered by
T.S.SIVAGNANAM,J.)

These Tax Case Revisions have been filed by the dealer challenging the order passed by the Tamil Nadu Sales Tax

Appellate Tribunal (Main Bench), Chennai in S.T.A.Nos.74, 75 and 73/2013.

2. The Tax Case Revisions have been filed raising the following substantial questions of law:-

> "i) Was the Tribunal correct in treating the Post-Purchase Discount of Rs.5,12,738/- received by the Petitioner from their supplier in relation to the purchases made by the Petitioner from that supplier as an escaped sales turnover liable to tax at 12.5% under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006?
>
> ii) Whether the Post-Purchase Discount of Rs.5,12,738/- received by the Petitioner from their supplier in relation to the purchases made by the Petitioner from that supplier falls within the scope of the definition of the word "turnover" given in sub-section (41) of Section 2 of the Tamil Nadu Value Added Tax Act, 2006?
>
> iii) Was the Tribunal correct in ignoring the judgment of the Supreme Court in the case of "Neyveli Lignite Corporation Ltd Vs Commercial Tax Officer, Cuddalore and another (and another appeals and cases [2001] 124 STC 586 (SC)" holding that the amount which flows from the purchaser to the seller alone would form part of the turnover of the seller but taking a contrary view that the Post-Purchase Discount received by the Petitioner from their supplier would form part of the turnover of the Petitioner?
>
> iv) Whether the decision of this Hon'ble Court "Jayam & Co Vs. the Assistant Commissioner (Main), Amaindakarai Assessment Circle, Chennai and Another (And other Cases) [2013] 65 VST 260 (Mad)" justifies the conclusion of the Tribunal that the Post-Purchase Discount of Rs.5,12,738/- received by the petitioner from their supplier in relation to the purchases made by the petitioner from that supplier was an escaped sales turnover liable to tax at 12.5% under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006?
>
> v) Was the Tribunal correct in ignoring Rule 10(6)(b)(ii)(C) of the Tamil Nadu Value Added Tax Rules, 2007, which has a direct bearing on the question of law involved in the case on hand?
>
> vi) Whether in the facts and circumstances of the case the Tribunal was justified in restoring the penalty of Rs.32,046/- imposed by the assessing officer under Section 27(3) of the said Act."

3. It may not be necessary for this Court to answer the substantial questions of law on account of the fact that the petitioner/dealer has settled the entire arrears of tax and penalty. This is seen from the communication given by the Assessing Officer viz., Assistant Commissioner (ST), Villupuram II addressed to the Special Government Pleader in Rc.A3/709/2015 dated 05.12.2018. One of the questions which was raised in the Memorandum of Grounds of revision is with regard to the applicability of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006. Very recently, the said provision has been upheld by the Hon'ble Supreme Court by confirming the decision of the Division Bench of this Court. Be that as it may, since it is reported by the learned Additional Government Pleader that the entire tax has been paid by the assessee, these Tax Case Revisions are closed. The substantial questions of law are left open. No costs.

svki

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT)
State of Tamil Nadu
Vellore Division, Vellore.

2.Tamil Nadu Sales Tax Appellate
Tribunal (Main Bench),
Chennai - 600 104.

3.The Deputy Commissioner (CT) FAC,
Cuddalore.

4.The Assistant Commissioner(CT),
Villupuram - II.

+1cc To the Govt.Pleader, SR.No.89965

Tax Case (Revision) Nos.52 to 54 of 2014

RSV(CO)
KAK(24/01/2019)