IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Tax Case Revision.No.38 of 2009

The State of Tamil Nadu
represented by the
Deputy Commissioner (CT)
Salem Division
Salem ...Appellant/Petitioner

vs

Tvl.Haritha Grammer Limited
Belankondapalli
Hosur ...Respondent

Prayer:- Revision filed under Section 38(1) of the Tamil Nadu General Sales Tax Act to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 31.10.2002 in CTA No.11/2001, against the order of Appellate Assistant Commissioner(CT) Salem in AP.NO.437/99 dated 23/10/2000 against the order dated 23/10/2000 of the Appellate Assistant Commissioner(CT) in salem in AP.NO. & Year 437/99 against the order passed by the commercial Tax Officer, Hosur (South) dated 06/07/99 in TNGST.3360922/96-97.

For Petitioner : Mr.V.Haribabu
Additional Government Pleader(T)

For Respondent : No Appearance

JUDGMENT

Heard Mr.V.Haribabu, the learned Additional Government Pleader appearing for the petitioner. Though the respondent has been served and their name is printed in the cause list, none appears for the respondent.

2.This Tax Case Revision, filed against the order passed by the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 31.01.2002, has been admitted on the following substantial questions of law:

> "1.In the facts and circumstances of the case, whether the Tribunal has erred in holding that the additional sales tax would not attract on the taxable turnover for the period upto 31.07.1996 and that it cannot be applied without taking into account the taxable turnover for the entire assessment year?
>
> 2.Whether the order of the Tribunal in having deleted the consequent penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959, is legally sustainable?"

3.Initially the matter was filed before the Tamil Nadu Taxation Special Tribunal and on its abolition, the case stood transferred to this Court and re-numbered as T.C.(R).No.38 of 2009.

4.As far as Question No.1 is concerned, the issue is no longer res integera as it is settled by the Division Bench of this Court in the case of the Commissioner of Commercial Taxes Vs. S.S.D.Oil Mills Co. Ltd., in W.P.No.1060 of 2005. The Hon'ble Division Bench has held as follows:

> As per the law that stood relevant to the Assessment year 2001-02 upto 31.10.2001, the tax liability under the Tamil Nadu Additional Sales Tax Act would arise if the taxable turnover exceeded Rs.25 Crores. With effect from 1.11.2001, the liability was attracted when the taxable turnover exceeded Rs.10 Crores. As far as the present case is concerned, applying the unamended provision, the assessee is liable to pay sales tax for the pre-amended period as well as for the post-amendment period, as the turnover for the entire year exceeded the taxable limit both under the unamended provision as well as under the amended provision. The Assessing Officer calculated the additional sales tax at the rate of 2% on the taxable turnover for the whole of the year. Having regard to the above, the Tribunal held that for the period 1.4.2001 to 31.10.2001, the turnover has to be assessed when the taxable turnover exceeded Rs.25 Crores at 1.5% of the taxable turnover and with effect from 1.11.2001, the slab has to be followed as per the amendment under Act 13 of 2001, when the taxable turnover exceeded Rs.10 Crores i.e., at 1% of the taxable turnover and where the taxable turnover exceeded Rs.25 Crores and did not exceed Rs.50 Crores, the taxable turnover was assessable at the rate of 1.5% of the taxable turnover. Going by the decision of this Court, taking the entire year's turnover, the liability

upto the date of amendment will have to be worked out at the rate prevailing upto the date of the amendment and for the period subsequent to the amendment, the rate prevailing therein. By taking the taxable turnover for the whole year, as the taxable turnover attracted the charge, the necessity to pay the additional sales tax shall be at the relevant rate prevailing as per the unamended law upto the unamended period and post amendment period would be covered by the rate fixed under the amended law. Applying the said decision, the assessee's turnover for the entire year has to be first worked out and upto the cut-off period i.e., upto 31.7.2006, the applicable rate has to be worked out as per the unamended provision and beyond that for the post-amendment period, the applicable rate under the amended provision has to be arrived at.”

5. Thus, by applying the decision of the Division Bench, Question No.1 is answered in favour of the revenue and against the dealer.

6. So far as Question No.2 is concerned, the first appellate authority, namely the Appellate Assistant Commissioner by order dated 23.10.2000, remanded the matter to the Assessing Officer for verification and quantification of the penalty. The said order was confirmed by the Tribunal.

7. Hence, we find that there is no question of law with regard to the issue relating to levy of penalty and it is only an order of remand passed by the appellate Assistant Commissioner.

8. Accordingly, we hold that the Question No.2 does not required to be answered and the Assessing Officer is directed to take note of the direction issued by the Appellate Assistant Commissioner vide order dated 23.10.2000 and proceed in accordance with law.

In the result, the appeal is partly allowed with the above observation. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore

2.The Deputy Commissioner (CT)
State of Tamil Nadu,
Salem Division
Salem.

3.The Commercial Tax Officer,
Hosur(South).

4.The Appellate Assistant Commissioner(CT)
Salem.

+1cc to Special Government Pleader(T), sr.no.41581

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