In the High Court of Judicature at Madras

Dated : 27.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Revision Nos.151 to 153 of 2018
& CMP.Nos.20599, 20617 and 20922 of 2018

M/s.Sri Vignesh Jewellers,
Coimbatore ...Petitioner

Vs

The State of Tamil Nadu, rep.by
the Joint Commissioner (ST),
Coimbatore Division, Coimbatore ...Respondent

REVISIONS under Section 60 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 14(13) of the Tamil Nadu Value Added Tax Rules, 2007 against the common order dated 22.1.2018 respectively in STA.Nos.155, 154 and 153/2016 on the file of the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore respectively for the assessment years 2013-14, 2011-12 and 2010-11.

For Petitioner : Mr.C.Sivasubramanian

For Respondent : Mr.V.Haribabu, AGP

COMMON ORDER

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

We have heard Mr.C.Sivasubramanian, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent.

2. The issue involved in these revisions lies in a narrow compass and therefore, with the consent of the learned counsel on either side, they are taken up for joint disposal.

3. The petitioner is a dealer in gold and silver articles registered on the file of the Assistant Commissioner (CT), Trichy Road Assessment Circle, Coimbatore. The petitioner effected purchases and sales, reported the same in their returns and paid value added tax after adjustment of the input tax credit in their monthly returns. In respect of the sales of exempted goods, the petitioner claimed exemption in their monthly returns. On 16.4.2014, the place of business of the petitioner was inspected by the officials of the Enforcement Wing and it was alleged that in respect of the exempted sales of ***metti, anklets, etc.,*** there was no separate stock register maintained and therefore, the Inspecting Team stated that an action would be taken to reject the claim of exemption. The Inspecting Team alleged that the petitioner reported more turnover to the Income Tax Department when compared to the sales turnover reported to the Sales Tax Department and stated that the

difference amounted to sales suppression.

4. During the inspection, for the assessment year 2013-14, the officials alleged that certain slips were found at the time of inspection and those revealed the purchase and sales suppression. Based on such inspection, the Assessing Officer of the petitioner issued notice for the assessment years 2010-11, 2011-12 and 2013-14 proposing to levy tax on the alleged actual suppression. The Assessing Officer of the petitioner further proposed to make equal addition towards probable omission and also proposed to levy penalty under Section 27(3)(b) of the Tamil Nadu Value Added Tax Act, 2006 (for brevity, the TNVAT Act).

5. The petitioner filed their objections stating that in respect of the alleged difference in the sales turnover between the income tax returns and the sales tax returns, the petitioner had immediately paid tax when the same was brought to their notice by the Inspecting Officials. The petitioner further contended that the difference in turnover was found out only from their accounts i.e. returns filed under the Income Tax Act, 1961 and the monthly returns filed under the TNVAT Act and that there was no willful non disclosure of assessable turnover and consequently, no penalty could be levied.

6. However, the Assessing Officer rejected the petitioner's objections and confirmed the proposals by passing the assessment orders dated 25.7.2016. As against the said assessment orders, the petitioner preferred appeals to the Appellate Deputy Commissioner (CT), Coimbatore, who, by a common order dated 04.8.2016, while sustaining the sales suppression and

the purchase suppression, deleted the equal addition made and also the penalty levied under Section 27(3) of the TNVAT Act.

7. Aggrieved by the said common order passed by the Appellate Deputy Commissioner, the State preferred appeals before the Tribunal, which, by a common order dated 22.1.2018, partly allowed the appeals and partly dismissed the appeals apart from restoring the levy of penalty by rejecting the claim of exemption on the ground that the sales turnover was disproportionate to the purchases. This was in respect of the sales turnover of silver anklets for the assessment years 2011-12 and 2013-14. With regard to the assessment year 2010-11, the Tribunal dismissed the appeal filed by the State on the exemption allowed on the sales turnover of silver anklets. However, the Tribunal restored the penalty, which was deleted by the Appellate Deputy Commissioner. The common order passed by the Tribunal is challenged before us in these revisions.

8. The petitioner has filed these revisions raising the following substantial questions of law :

> *"i. Whether the Appellate Tribunal is legally correct in restoring the penalty levied under Section 27(3) of the TNVAT Act when the turnover, which were subjected to tax, were taken from the petitioner's books of accounts and as such, there was no suppression of turnover unearthed by the Department from outside the books of accounts maintained by the petitioner ?*

ii. Whether the Appellate Tribunal is correct in restoring the penalty levied under Section 27(3) of the TNVAT Act when there is no finding rendered by the Assessing Officer in the assessment order that the petitioner willfully failed to disclose the assessable turnover? And

iii. Whether the Appellate Tribunal is correct in restoring the penalty levied under Section 27(3) of the TNVAT Act when the petitioner had paid the tax for the alleged difference immediately when the said differences were pointed out by the Enforcement Wing Officials at the time of inspection from the petitioner's own books of accounts ?"

9. We have carefully perused the materials placed on record.

10. In order to levy penalty under Section 27(3) of the TNVAT Act, the Assessing Officer has to point out that the assessee willfully failed to disclose the assessable turnover. Mere non disclosure is not sufficient to levy penalty. This legal position is well settled by this Court in several decisions namely

i. ***State of Tamil Nadu Vs. Afra Car Jewels [reported in (2014) 76 VST 343 (DB);***

ii. ***State of Tamil Nadu Vs. Tvl. Golden Holmes Pvt. Ltd. [TCR. No.24 of 2016 dated 14.9.2016 (DB)];***

iii. ***M/s.Saravana Super Market rep.by its Proprietor Vs. CTO [WP.Nos.35019 and 35020 of 2016 dated 01.12.2016 rendered by one of us (TSSJ)],*** which were followed in the case of ***M/s.G.K.Foundation Vs. AC(CT) [WP. Nos.15047 and 15048 of 2017 dated 13.7.2017*** and in the case of ***M/s. Maharasi Thanga Maligai Vs. CTO, Vandavasi [WP.NO.34330 of 2015 dated 08.9.2016].*** In all the aforementioned decisions, this Court found that in the absence of any finding by the Assessing Officer that the non disclosure was willful with an intention to evade payment of tax, there was no justification to levy penalty.

11. In our considered view, the Appellate Deputy Commissioner rightly considered the petitioner's plea and deleted penalty. The reasons assigned by the Tribunal for restoring the penalty are not convincing and are not in accordance with the law laid down in the aforementioned decisions. It is not disputed by the Revenue that the alleged difference in turnover was found out only from the books of accounts i.e. the returns filed by the assessee under the Income Tax Act, 1961 and the monthly returns filed under the TNVAT Act. In such circumstances, there can be no allegation of willful non disclosure of taxable turnover. Furthermore, much prior to the issuance of the revision notices, the entire tax has been paid and it is represented by the learned counsel for the petitioner that excess tax has been paid. Thus, we are of the considered view that the common order passed by the Tribunal restoring the penalty calls for interference.

12. Accordingly, the above tax case revisions are allowed, the penalty, which has been restored by the Tribunal, is set aside and the common order passed by the Appellate Deputy Commissioner is restored. The substantial questions of law framed for consideration are answered in favour of the petitioner. No costs. Consequently, the connected CMPs are closed.

27.11.2018

Internet : Yes

To

1.The Joint Commissioner (ST), Coimbatore Division, Coimbatore.
2.The Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore

RS

<u>T.S.SIVAGNANAM,J</u>

<u>AND</u>

<u>N.SATHISH KUMAR,J</u>

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