



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

Tax Case (Revision) Nos.1 to 7 of 2018

Dr.Reddy's Laboratories,
No.8, Balaji Nagar Extension
New Raja Colony, Beema Nagar,
Trichy - 620 001.

... Petitioner in all cases

-vs-

The State of Tamil Nadu
represented by
The Assistant Commissioner (CT)
Woraiyur Assessment Circle,
Trichy.

... Respondent in all cases

PRAYER: Revision Petitions to revise the order of the Sales Tax Appellate Tribunal (Add. Bench), Madurai - 20 dated 12.07.2017 and passed in Ref.No.777 to 783 of 2017.

Preferred against the orders issued by the Appellate Deputy Commissioner(CT), Trichy in VAT AP No.03/16 to 09/16, dated 16.08.2016 relating to the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 (Seven years) respectively against the orders of the Assistant Commissioner (CT), Woraiyur Assessment Circle in TIN No.33023442124/2007-2008 to 2013-2014 all dated 07.12.2015.

In all petitions
For Petitioner

: Mr.N.Prasad

For Respondents

: Mr.V.R.Shanmuganathan, Spl.G.P.

COMMON O R D E R

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

Heard Mr.N.Prasad, learned counsel for the petitioner and
<https://hservices.ecourts.gov.in/hcservices/>
Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing
for the respondent.



2. With the consent of either side, the tax cases are taken up for disposal at the admission stage itself.

3. These tax cases have been filed by the petitioner assessee raising the following common questions of law.

" i. Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Authority, committed an error of law in not entertaining the appeal filed by the petitioners under Section 58 of the TNVAT Act, 2006 and wrongly applying the Third Proviso to Section 58(1) which would apply only when the remand made by the first appellate authority was for fresh assessment and not when the remand was coupled with directions and adverse findings?

ii. Whether the Hon'ble Sales Tax Appellate Tribunal committed an error of law in failing to note that the embargo contained in the Third Proviso to Section 58(1) of TNVAT Act, 2006, was intended to reduce multiplicity of proceedings and therefore by its very nature could not apply when the remand made by the first appellate authority contained adverse directions and findings?

iii. Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Tribunal ought to have seen that on merits, the levy of tax of Rs. 2,60,708/- (TC 1/18), Rs. 2,89,230/- (TC 2/18), Rs. 3,84,763/- (TC 3/18), Rs. 8,27,488/- (TC 4/18), Rs. 7,75,255/- (TC 5/18), Rs. 7,62,157/- (TC 6/18) and Rs. 5,48,838/- (TC 7/18) on the supply of fresh stock of medicines and formulations made by the petitioners to their stockists after taking back the life expired stock was illegal since it was only a case of an exchange or replacement and did not involve sale of goods by the petitioners?

iv. Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Tribunal ought to have seen that the conclusion of a sale made in the appellate order dated 16.08.2016 was erroneous and suffered from clear error of law contrary to the materials placed in the course of hearing of the first appeal on 09.08.2016?

v. Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Tribunal ought to have held that there was no case for levy of penalty imposed as figures taken for the revision of assessment were from the books of accounts of the petitioners?"

4. Among the questions of law which have raised by the petitioner as referred to supra, questions No. 1 and 2 alone deal with the jurisdiction of the Tribunal and questions of law 3 to 5



are on merits of the matter and therefore, we entertain these cases only on the following questions of law 1 and 2, which read as follows:

"i. Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Authority, committed an error of law in not entertaining the appeal filed by the petitioners under Section 58 of the TNVAT Act, 2006 and wrongly applying the Third Proviso to Section 58(1) which would apply only when the remand made by the first appellate authority was for fresh assessment and not when the remand was coupled with directions and adverse findings?

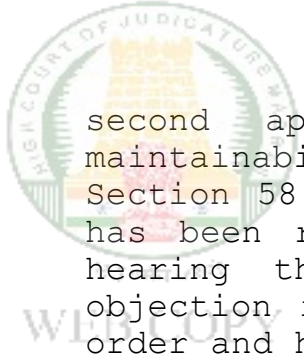
ii. Whether the Hon'ble Sales Tax Appellate Tribunal committed an error of law in failing to note that the embargo contained in the Third Proviso to Section 58(1) of TNVAT Act, 2006, was intended to reduce multiplicity of proceedings and therefore by its very nature could not apply when the remand made by the first appellate authority contained adverse directions and findings?"

5.The petitioner is a public limited company and registered as a dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act). The respondent assessed the petitioner under the provisions of TNVAT Act for the assessment year 2007-08 to 2013-14 and taxed the supplies made by the petitioner in pursuance of a replacement scheme.

6.The petitioner's contention was that in the replacement scheme, medicines which have passed their shelf-life either at the shop or at the hands of the stockists are returned to the petitioner. Thereafter, the petitioner despatched the said life-expired damaged stock for destruction to its factory/Global Distribution Center, Hyderabad. The petitioner further stated that as per the industrial norms, they are indicating the value of the life-expired material and the value indicated is the initial delivery cost of the material and this is a uniform industrial practice in the said line of industries. The petitioner challenged the assessment orders by lodging appeals before the Appellate Deputy Commissioner (CT) Trichy. Those appeals were heard by the appellate authority and by common order dated 16.08.2016 while confirming the findings given by the assessment officer, granted limited relief to the petitioner with regard to the equal time addition. In this regard, the appellate authority held that the assessing officer should have given a memo or a notice. Therefore, the matter stood remanded back for fresh disposal. In the penultimate paragraph of the order passed by the appellate authority, he states that with two directions, those appeals are remanded back for fresh disposal.

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7.The petitioner carried forward the matter by way of second appeals before the Tamil Nadu Sales Tax Appellate Tribunal. The



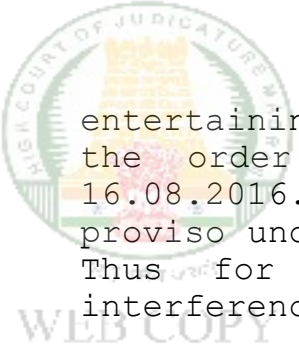
second appeals were not registered, but were listed for maintainability on the ground that in terms of third proviso to Section 58(1), such an appeal is not maintainable since the matter has been remanded to the assessing officer. The Tribunal after hearing the learned counsel for the petitioner sustained the objection regarding maintainability of the appeals by the impugned order and held that the appeals are not maintainable. This order is challenged in the present tax cases raising the questions of law as mentioned above.

8. Section 58 of the Act deals with appeal to appellate Tribunal. The impugned order having been passed by the Appellate Deputy Commissioner (CT) under Section 51(3) is an appealable order. The petitioners have been non suited by referring to the third proviso under Section 58(1) which reads as follows

"Provided also that no appeal shall be admitted against an order, passed by the Appellate (Deputy) Commissioner under Section 51 or by the Appellate (Joint) Commissioner under Section 52, as the case may be, setting aside the assessment and directing the assessing authority to make a fresh assessment."

9. In terms of the above proviso, no appeal shall be admitted against an order passed by the Appellate Deputy Commissioner under Section 51 or by the appellate Joint Commissioner under Section 52 as the case may be setting aside the assessment and directing the assessing authority to make a fresh assessment. Therefore, the embargo placed under the said proviso would operate when the appellate authority exercising power either under Section 51 or 52 sets aside the assessment order and remands the matter for fresh assessment.

10. In these tax cases, it has to be seen as to whether the appellate authority had set aside the order of assessment and directed the assessing officer to make a fresh assessment. On a reading of the order passed by the appellate authority dated 16.08.2016 especially from page 7 of the order, we find that the appellate authority has discussed the merits of the matter and in page 9 of the order has given four reasons as to why the case of the petitioner cannot be accepted. Thus, the decision taken by the appellate authority is on the merits of the matter and the assessment order stood confirmed by the said order and it was not set aside. Though in the last few lines of the order passed by the appellate authority, he states that the appeals are remanded back for fresh disposal, the remand is only on one aspect i.e. with regard to the equal time addition. Though the order states that there are two directions in effect, there is only one direction regarding the equal time addition. The other issues are all findings rendered by the appellate authority on the merits of the matter. Therefore, there was no direction to the assessing officer to redo the assessment afresh by setting aside the assessment order. Therefore, in our considered view the Tribunal erred in not



entertaining the second appeals filed by the petitioner challenging the order passed by the Appellate Deputy Commissioner dated 16.08.2016. The facts of the case clearly show that the third proviso under Section 58(1) has no application to the cases on hand. Thus for the above reasons, the impugned orders call for interference.

11. Accordingly, these tax cases are allowed on the questions of law 1 and 2 framed above are answered in favour of the petitioner. The Tamil Nadu Sales Tax Appellate Tribunal is directed to entertain the second appeals filed by the petitioner and hear the matter on merits and in accordance with law. No costs.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1 Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Madurai-20

2 The Assistant Commissioner (CT)
Woraiyur Assessment Circle,
Trichy.

+7CC to Mr.N.Inbarajan, Advocate, SR.No. 50842 to 50848)

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