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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-06-2019

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THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.No.1718 of 2008

The State of Tamil Nadu,
rep.by the Deputy Commissioner (CT),
Chennai (North) Division,
Greams Road, Chennai-600 006. ... Appellant

-vs-

Tvl. Bellary Steels & Alloys Ltd. ... Respondent

Revision against the order, dated 04.02.1997, passed in Tribunal Appeal No.1162 of 1993 by the Tamil Nadu Sales Tax Appellate Tribunal, Chennai, against the order of the Appellate Assistant Commissioner (CT) II Chennai in Order No. & Year AP 618/92 dated 11/03/93 revised the proceedings of the Commercial Tax Officer, Mannady (East) Assessment Circle, Madras-1, order dated 31/07/1992 in TNGST No.007580/90-91.

For Appellant : Mr.Mohammed Shaffiq,
Senior Standing Counsel.

For Respondent : No appearance

JUDGMENT

(By Dr.Vineet Kothari,J.)

This Revision is filed by the Revenue against the order, dated 04.02.1997, passed in Tribunal Appeal No.1162 of 1993 by the learned Tamil Nadu Sales Tax Appellate Tribunal, Chennai, allowing the appeal of the Assessee, namely, Tvl. Bellary Steels & Alloys Ltd. partly and, while upholding the levy of tax on the loan of goods imported by the Assessee against the Advance Licence treated as sales of the said goods, the learned Tribunal set aside the penalty imposed on the Assessee for non-disclosure of the said transactions as 'taxable

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turnover' in the Returns filed by the Assessee. The reasons cited by the learned Tribunal to set aside the penalty are quoted below for ready reference :

> ''6. The next point for consideration is whether penalty is attracted under Section 16 (2) read with Section 12 (5) (iii) of the Tamil Nadu General Sales Tax Act even though the learned Revising Authority has misquoted the provision. No doubt, penalty under Section 16 (2) could be levied in relating to revision under Section 12 (5) (iii) as has been held in 96 STC 60. Therefore, on this score, the contentions raised by the appellants could not be upheld. On the other hand, admittedly, all the relevant details regarding the import of melting scraps, transfer of the melting scraps to the other party, receipt of the melting scraps from the other party to the appellants were available not only in the books of the appellants, but also made known to the learned Assessing Authority even at the time of final assessment by way of various statements. Secondly, the appellants have filed the profit and loss account and Balance Sheet before the learned Assessing Authority which disclosed these transactions. Therefore, the learned Assessing Authority even at the time or original assessment was fully aware of the impugned transactions which are recorded in the books of accounts of the appellants. Consequently, the impugned turnovers could not be considered as an escaped turnover which had escaped attention of the original Assessing Authority. Further, the appellants might have been under the bona fide (sic) belief that such loan transactions were not liable to be assessed to tax. On this score, they might not have included the impugned turnover in the returns filed by them. In any event, in so far as the appellants were concerned, it was an arguable point. Therefore, as the levy of penalty requires a greater degree of proof to establish the wilful intent on the part of the appellants not to disclose the turnover, we hold that there are no warranting circumstances to uphold the penalty as levied by the learned Assessing Authority. To this extent, the appellants are entitled for relief.''

2. Having heard the learned counsel for the Revenue, we are of the considered opinion that there is no merit in the present Revision filed by the Revenue and that the deletion of

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penalty by the learned Tribunal was absolutely justified in the facts and circumstances of the case. Since as a condition of the Advance Licence under which the Assessee imported the goods in question dealing in electrical goods could not be sold in the ordinary course of business, the dealer claimed that the goods in question were given by way of loan to some other dealers during the course of the year and upon return of the same, the goods were used in the manufacture of other goods by the Assessee. The transactions were duly recorded in the Books of Accounts. It was also contended before the Assessing Authority that it was only a loan of goods and not a sale attracting levy of sales tax under the provisions of Tamil Nadu General Sales Tax Act. But, instead of accepting the said version or contention of the Assessee, the Assessing Authority levied the tax on the said transactions of loan of goods merely on the ground that documentary evidence to support such loan transactions was not produced by the Assessee. There is neither any specific mention of the fact that the Assessing Authority gave a show cause notice to the Assessee and thereupon the Assessee failed to produce the documents nor the Assessing Authority held some inquiry in the matter and then found that it was actually a transaction of sale and the goods in question claimed to have been sent on loan to other dealers never returned back to the Assessee and thereupon such an inference of it being a taxable sale was drawn by the Assessing Authority.

3. Be that as it may, while treating the same as a taxable sale, the Assessing Authority held that the Assessee was also liable to pay the penalty for non-disclosure of the transactions of sale in the Return filed by the Assessee.

4. It is that penalty, which was an insult added to injury for this Assessee, which came to be set aside by the learned Tribunal, which is still sought to be reversed by the Revenue by filing this Revision Petition before this Court.

5. We are rather surprised at the thoughtless litigative approach of the Tax Department in such cases. The penalty in question could not obviously have been imposed much less sustained by the higher appellate authorities merely because a plausible explanation of the Assessee came to be turned down by the Assessing Authority. The Tribunal, in our opinion, rightly set aside the penalty, but the Revenue did not feel satisfied and preferred the present Revision Petition. We are satisfied that it does not give rise even to a question of law much less acceptance of the said Revision Petition by this Court. This Revision is, thus, without any merit and liable to be dismissed.

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6. Tax Case is, accordingly, dismissed. No costs.

7. Registry is directed to forward a copy of this order to the respondent-Assessee.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Sales Tax Appellate Tribunal,
Chennai.

2.The Appellate Assistant Commissioner(CT)
Chennai.

3.The Deputy Commercial Tax Officer,
Chenani.

4.The Deputy Commissioner (CT),
Chennai (North) Division,
Greams Road, Chennai-6.

5.Tvl.Bellary Steels & Alloys Ltd.,
96, Coral Merchant Street,
Chennai-600 001.

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