IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
&
THE HON'BLE MRS.JUSTICE V.B.BHAVANI SUBBAROYAN

WRIT PETITION NOS. 14394 TO 14396 OF 2008
&
M.P.NOS.1, 1 & 1 OF 2008

M/s.Gomathi Industries,
rep.by its Parter S.Utharni, ...Petitioner
(in all the writ petitions)

Vs.

1.The Tamil Nadu Sales Tax Appellate Tribunal
(Addl. Bench) Coimbatore
Commercial Taxes Buildings,
Coimbatore - 18.

2.The Commericial Tax Officer,
Perundurai Assessment Circle,
Perundurai ...Respondents
(in all the writ petitions)

Common Prayer: Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the first respondent in its order in CTSA No.445,443 & 444/2003 dated 25.01.2008 and quash the same.

For Petitioner :Mr.S.Ramanathan
(in all the writ petitions)

For Respondents:Mr.V.Haribabu
Additional Government Pleader (Tax)
(in all the writ petitions)

COMMON ORDER

[Order of this Court was made by T.S.SIVAGNANAM.,J]

We have heard Mr.S.Ramanathan, learned counsel for the petitioner in all the cases and Mr.V.Hari Babu, learned Additional Government Pleader appearing for the respondents in all the cases.

2. These writ petitions have been filed by the petitioner challenging against the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Coimbatore. The Assessment for the year 1997-98, 1998-99 and 1999-00 under the provisions of Tamil Nadu General Sales Tax Act, 1959 are the subject matter in question. The second respondent/Assessing Officer completed the assessment holding that the petitioner has suppressed the turnover, since they were not in a position to produce evidence to show the entries made in the quotations did not materialize as same.

3. Unfortunately, the Assessment Officer has directed the assessee to prove the negative which should not have been done. In our considered view the Appellate Authority rightly construed the factual matrix and allowed the appeal. We refer to the findings rendered by the appellate authority which is quoted herein below:

> "As regard slip No.7, the examination of the entries No.12/11.10.99 for Rs.40,000/- reveal no sale of goods. The Assessing Authority has not proved that the amount noted was the sale amount realized on a concluded sale. There was no delivery or sale of goods nor transport of goods to the destination mentioned in the slip. It may be noted here the entires found as many as slips the concluded sales were found accounted for by the appellant accordingly to the Enforcement Wing Officials. The amount of Rs.40,000/- seen in slip No.7 remain as quoted price only and no sale of goods is found evidence. The stand taken in this regard by the Assessing Authority is not acceptable and in view of no sales involved in Slip No.7 the assessment of Rs.40,000/- and equal addition is to be deleted and the same is set aside."

4. The Tribunal while reversing the order, committed a serious error in stating that when notices were issued to the persons who have obtained quotation, they did not appear and did not give any reply either accepting that they have purchased material from the petitioner or denied having purchased material from the petitioner, therefore concluded that the quotations have fructified into sale. The finding rendered by the Tribunal is absolutely incorrect and the finding referred by the First Appellate Authority is fully justified and there were no grounds to reverse such a finding.

5. In the result, the writ petitions are allowed and the order passed by the Tribunal is set aside and the order passed by the First Appellate Authority is restored. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Tamil Nadu Sales Tax Appellate Tribunal
(Addl. Bench) Coimbatore
Commercial Taxes Buildings,
Coimbatore - 18.

2.The Commericial Tax Officer,
Perundurai Assessment Circle,
Perundurai

+1cc to Mr.S.Ramanathan, Advocate sr.34197
+1cc to Special Government Pleader sr.34904

Writ Petition Nos. 14394 to 14396 of 2008
&
M.P.Nos.1, 1 & 1 of 2008

rk(co)
nr 12/06/2019