

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05.04.2019

Orders Pronounced on : 16.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.4694 of 2008

and

M.P.No.2 of 2008

TK.Duraimohan
legal heir of deceased
TK.Kaliappan
Durai Oil Mill
Thandagoundampalayampudur
Perundurai Taluk
Erode District.

... Petitioner

Versus

1. Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
Coimbatore - 641 018.
2. The Appellate Assistant Commissioner
of Commercial Taxes
Erode.
3. The Commercial Tax Officer
Perundurai.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the first respondent in his order in Coimbatore Tribunal Appeal No.414 of 2000 dated 16.11.2006 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.V.Haribabu
Additional Government Pleader (Taxes)

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The petitioner prayed for a writ of certiorari to quash the order of the first respondent, Sales Tax Appellate Tribunal, Additional Bench at Coimbatore, dated 16.11.2006 in Appeal No.414 of 2000, in this Writ Petition.

2. The case of the petitioner as stated in the affidavit filed in support of this Writ Petition and as argued by the learned counsel Mrs.R.Hemalatha for the petitioner is that the petitioner's late father was carrying on a proprietorship business in the name and style of "Durai Oil Mill" dealing in groundnut pods and groundnut kernels, who was an assessee on the file of the Commercial Tax Officer, Perundurai in TNGST No.2920761. During the assessment year 1996-97, the father of the petitioner had reported a total and taxable value of Rs.1,14,000/- by way of returns in Form-A1. It was further stated by the learned counsel that the Enforcement Wing Officers on 14.02.1997 had inspected the premises of the petitioner's late father and found that 323 bags (40 Kgs each) of groundnuts kernel and other stocks were found, for which no purchase vouchers or bills were produced at the time of inspection and the Enforcement Wing assessed the estimated suppression as Rs.5,31,675/- and 50% at Rs.2,65,838/- for probable omission. Accordingly, the third respondent by proceedings dated 17.06.1998 in TNGST No.29200761/96-97 determined a total and taxable turnover of Rs.9,11,613/- based on the best judgment order passed by the third respondent. The said assessment order passed by the third respondent dated 17.06.1998 was challenged by the petitioner in Appeal under Section 31 of the TNGST Act, 1959 before the second respondent herein at Erode. The second respondent, after hearing the case and accepting the contentions raised by the petitioner, passed an order dated 23.08.1999 by refixing the taxable turnover of the petitioner's father for the year 1996-97 as Rs.1,25,510/- as against Rs.9,11,613/- as assessed by the third respondent. The second respondent while setting aside the assessment order passed by the third respondent also held that the appellant therein was eligible for relief in respect of penalty under Section 12(3)(b) of Act and modified the taxable turnover to Rs.1,25,510/-. Aggrieved by the order passed by the second respondent, the State, as a respondent Department, filed Appeal before the first respondent, who after hearing the parties, had passed an order in Appeal No.414 of 2000 dated 16.11.2006, which is the order impugned herein. The first respondent had set aside the order passed by the second respondent by allowing the Appeal filed by the State Department. Aggrieved by the first respondent's order sustaining the order of the third respondent,

the petitioner has filed this Writ Petition before this Court challenging the same.

3. The learned counsel for the petitioner would submit that the first respondent had set aside the well considered order of the second respondent, which is per se illegal on the fact that the first respondent failed to appreciate that whenever particular suppressed turnover deducted at the time of inspection of the place of business or check of movement of goods is found to have been accounted for by the concerned dealer subsequent to such inspection, the assessing officer should not have assessed the same turnover again and demanded tax, thereby giving room for double taxation. The learned counsel for the petitioner would also state that subsequent to the inspection, the petitioner's father had brought the stocks found to have been deficit, into the account and properly accounted for the same, which precisely was not taken into account by the first respondent while setting aside the order of the second respondent.

4. Per contra, learned Additional Government Pleader (Taxes) appearing for the State Mr. Haribabu would submit that for the year 1996-97, assessee was assessed on a total and taxable turnover of Rs.14,91,313/- and Rs.9,11,613/- respectively under the TNGST Act by order dated 17.06.1998 against the reported turnover of Rs.1,14,100/-. Enhancement turnover was made on the basis of the materials gathered during the inspection of the place of business of the dealers by the Enforcement Wing Officers on 14.02.1997. Aggrieved the assessment order, dealers filed Appeal to the Appellate Assistant Commissioner (ST), Erode and in the appeal order in AP.284/98, dated 23.08.1999 deleted the addition made holding that "the omitted items subsequently accounted for in the accounts and for the defects noticed, the Appellate Assistant Commissioner (ST), made an addition of 10% to the book turnover and refixed the taxable turnover of Rs.1,25,510/-. Against the Appeal orders, department filed State Appeal before the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore and the said State Appeal was allowed on merits after verification of the records and restored the original order of the Assessing Authority in CTSA No.414 of 2000 dated 16.11.2006 and Assessing Authority given effect of the Tribunal order, demanded balance of tax of Rs.22,901/- and penalty of Rs.47,852/- and initiated recovery proceedings under R.R. Act by issue of Form-1 notice to the petitioner to collect the arrears. It is against the Tribunal order and also against the collection of arrears under R.R. Act, the present Writ Petition have been filed.

5. The learned Additional Government Pleader would further submit that the assessee ought to have filed his objections stating that the accounts were available with them and the purchase bill had also been available and accounted for the accounts at the time of the third respondent passing the assessment order. However, the petitioner's father had not raised any objection before the assessing officer and subsequently cannot raise such objection, when such records were not brought before the assessing officer, which would mean that the assessee did not have any such record at the time of assessment. But subsequent production of the purchase bill and other details for the stocks that had not been produced at the time of inspection by the Enforcement Department is only fabricated and cannot be accepted. He would also submit that though the father of the petitioner has not produced the purchase bill before the Enforcement Officers, but had maintained the stock book which was verified by the Superintendent, Market Committee, periodically, which was not considered by the respondents herein.

6. The learned Additional Government Pleader for the respondent would submit that since the purchases said to have been made from the market committee, the same are liable to be taxed under the first point of purchase. When the purchases are made from Market Committee, the Market Committee is concerned only with the collection of cess and not with the accounts whether the purchases were accounted for by the dealer or not is not at all the question of botheration by the Market Committee and they are only concerned with the collection of cess for the purchases made from them and he would also reiterate that the said stock book produced before the inspection authorities is only a fabricated one.

7. Heard both the counsels and perused the materials on record.

8. On perusal of the records and upon hearing the arguments by both the parties, it is clear that during the assessment year 1996-97, the petitioner's father was running a proprietary concern, who had purchased 323 bags of groundnut kernels from a registered dealer and groundnuts purchased, for which the tax has been paid. However it is on the date of the inspection, the petitioner's father was not able to produce the purchase bill. However, on record it is clear that the petitioner's father had subsequently brought his purchases into the account and paid the tax due thereby rectifying the defects pertaining to the year 1996-97.

9. On perusing the order of the first respondent, it is clear from the order that the first respondent's view that the defects that were noticed by the inspecting authorities at the time of inspection, who have found that the dealer has not shown any purchase bills for the months from April to August, October, November 1996 and March 1997 and the inspection that were took place on 14.02.1997, heavy stocks of kernel was not supported by any records, though may be relevant and correct on the date of inspection, however, the first respondent failed to see that the assessee had subsequently brought his purchase into the account and had paid the tax due. Merely because the purchase bill was not produced at the time of inspection for the alleged stock that were found at the time of inspection, does not always mean that there is a suppression. The petitioner has also maintained a stock register, which has been signed by the Marketing Committee regarding the purchases made. The view taken by the first respondent in the Appeal, which is under challenge before this Court is not correct. The stocks that were found at the time of inspection cannot be treated as suppression for not having produced the purchase bill. The non-production of purchase bill at the time of inspection need not always be suppression, that too, when such stocks were found in the purchase register and for which, tax was paid subsequently.

10. As such, the order passed by the second respondent is well found and on perusing the order passed by the first respondent, the first respondent has not given any valid reason for interfering with the orders passed by the second respondent other than stating that at the time of inspection, there was no purchase bill produced by the assessee and the subsequent documents produced are fabricated. Merely on this ground, the first respondent has set aside the order passed by the second respondent, which is not correct. Under these circumstances, we are of the view that the order passed by the first respondent has to be set aside and the Writ Petition has to be allowed.

11. Accordingly, the Writ Petition stands allowed in favour of the assessee, thereby setting aside the order impugned passed by the first respondent herein. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mra

To

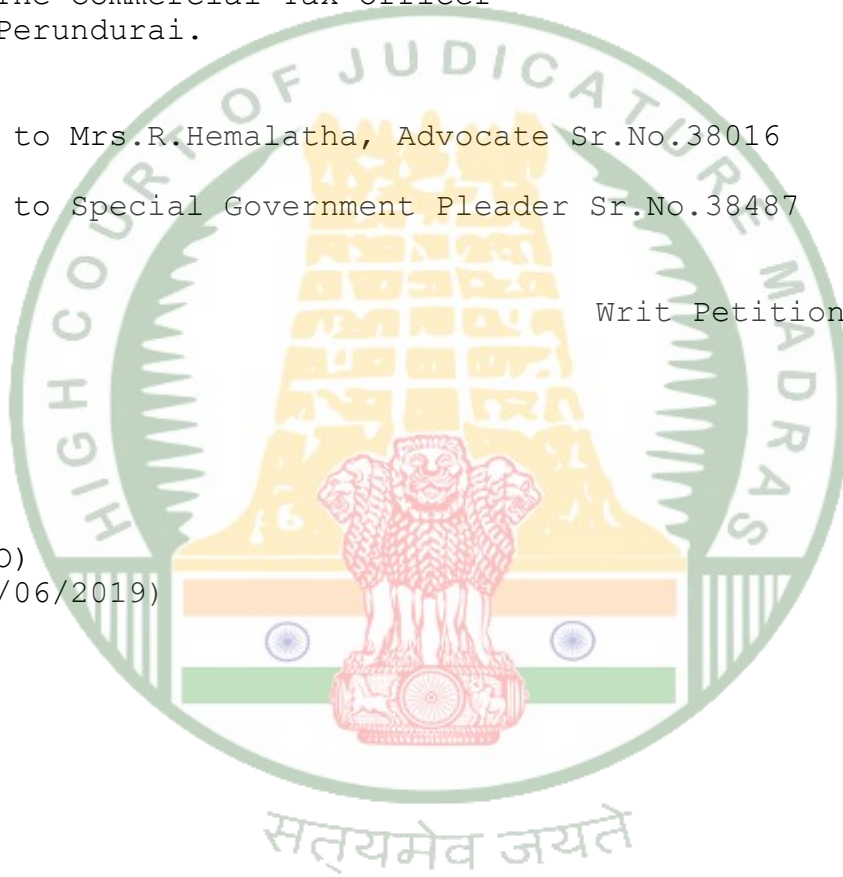
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+1 CC to Mrs.R.Hemalatha, Advocate Sr.No.38016

+1 CC to Special Government Pleader Sr.No.38487

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M.P.No.2 of 2008

SVI (CO)
KP (08/06/2019)



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