IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) Nos.100 and 101 of 2015
and
Miscellaneous Petition Nos.1 and 1 of 2015

Man Construction Pvt., Ltd.,
Now Known as
Man Infra Construction Ltd.,
Now at: 12th Floor, Krushal Commercial Complex,
Above Shoppers Stop, G M Road,
Chembur (West), Mumbai-400 089. .. Petitioner
In both Revisions

-vs-

The State of Tamilnadu,
Rep., by The Joint Commissioner (CT),
Central Division, Chennai-6. .. Respondent
In both Revisions

Tax Case Revisions filed under Section 38(1) of the Tamil Nadu General Sales Tax Act, 1959 to revise the order dated 07.08.2015, in STA Nos.94 of 2010 and 75 of 2011 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai for the assessment years 2004-05 and 2003-04 respectively.

For Petitioner : Mr.V.Sundareswaran
(In both Revisions)

For Respondent : Mrs.G.Dhanamadhri,
(In both Revisions) Government Advocate (Taxes)

COMMON ORDER
(Order of the Court was made by T.S.Sivagnanam, J.)

These tax case revisions have been filed by the petitioner, a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter after referred to as "the TNGST Act") on the file of the Assistant Commissioner (CT), Purasawalkam Assessment Circle challenging the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai (for brevity "the Tribunal") dated 07.08.2015 in STA Nos.94 of 2010 and 75 of 2011, for the assessment years 2004-05 and 2003-04 respectively.

2.The above revisions have been admitted, vide order dated 06.01.2016, on the following substantial questions of law:-

> "(i) Whether the Tribunal is correct in sustaining the penalty under Sec.16(2) of TNGST Act, when no discussion or reasoning is given to sustain the levy of penalty in the assessment order?
>
> (ii) Whether the Tribunal is right in sustaining the penalty, under revision of assessment under Section 16 of TNGST Act, for the dealers remitting tax under compounding system?
>
> (iii) Whether the Tribunal is justified in sustaining the penalty under Sec.16(2) of TNGST Act, when no justifiable findings have been given by the officer on "wilful suppression of turnover?"

3.Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent.

4.The short issue, which falls for consideration is whether the Tribunal could have invoked Section 16(2) of the TNGST Act and levied penalty on the petitioner. An initial proposal was made by the Assessing Officer to levy penalty under Section 12 (3)(b) of the TNGST Act. The proposal itself was on the allegation that the returns were either incorrect or incomplete. Initially, there was no proposal to levy penalty. Subsequently, notices were issued by the Assessing Officer, which according to the learned counsel for the petitioner are wholly without jurisdiction. In this regard, the learned counsel has referred to Sections 16-AA, 16(1)(b) and 16(2) of the TNGST Act.

5.Be that as it may, the petitioner submitted their objections and this led to passing of orders dated 31.03.2008 and 06.03.2009, whereby, penalty was also levied under Section 16(2) of the TNGST Act. The petitioner filed appeals before the Appellate Deputy Commissioner (CT)-III, who by orders dated 06.05.2010, allowed the appeals, vacated the penalty and held that Section 16(2) of the TNGST Act would have no application. The State preferred appeals to the Tribunal. One of the questions, which was framed for consideration before the Tribunal was whether, levy of penalty under Section 16(2) of the TNGST Act is correct or not.

6.Section 16(2) could have been invoked only when there is a specific case of wilful non-disclosure. Even going by the orders passed by the Tribunal, the entire turnover was assessed from the books of accounts produced by the petitioner. Therefore, the Tribunal erred in stating that the orders were on account of wrong quoting of provisions of law.

7.We do not agree with the said finding because, penalty imposable under Section 12(3) of the TNGST Act is entirely on a different plane from that of the penalty imposable under Section 16 of the TNGST Act, where mens rea has to be established. In contradistinction with Section 12 of the TGNST Act, which deals with procedure to be followed by the assessing authority, he will be entitled to levy penalty in terms of Section 12(3) of the TNGST Act, if while making an assessment in terms of Sections 12(1) and 12(2) of the TNGST Act, the Assessing Officer comes to the conclusion that it is a case of failure to submit return or submission of incorrect or incomplete return. Thus, the Tribunal erred in reversing the orders passed by the first appellate authority.

8.Thus, for the above reasons, these tax case revisions are allowed, the orders passed by the Tribunal are set aside, the orders of the first appellate authority are restored and the substantial questions of law are answered in favour of the petitioner/dealer. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
2nd Floor, City Civil Court Buildings, High Court Campus,
Chennai-600 104.

2. The Joint Commissioner (CT)
Chennai (Central) Division , Chennai.

3. The Appellate Deputy Commissioner
Chennai

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KAN(CO)
SP(06/03/2019)