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)No.74 of 2015

Messers New Era Industries
51, Adhchini, Sri Aurobindo Marg,
New Delhi: 110017 ... Petitioner/Appellate

-vs-

State of Tamil Nadu
Rep. By the Deputy Commercial Tax Officer,
Anna Salai II Assessment Circle,
Chennai. ... Respondent/Respondent

Tax Case filed under Section 38 of the Tamil Nadu General Sales Tax Act against the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai as passed in STA No.305/2002 dated 12.11.2010.

against the proceedings of the Deputy Commercial Tax Officer, Anna Salai II, Assessment Circle made in TNGST 0620263/99-2000.

against the proceedings of the Appellate Assistant Commissioner (CT)-IV, Chennai-2 made in A.P.No. 313/2001 (199-200) date of having 19.12.2001 and made in A.P.No. 360/2001 (1999-2000) (ren) date of Order 27/12/2001.

against the proceedings of the Deputy Commercial tax Offcer, Anna Salai II, Assessment Circle made in TNGST No. 0620263/99-200 dated 18/09/2001

against the proceedins of the deputy commercial Tax Officer, Anna Salai-II, Assessment Circle made in TNGST No. 06202631/99-200 Dated 31/07/2001.

For Appellant : Mr.B.Sivaraman
for Lakshmi Sriram

For Respondent : Mrs. Dhanamadhari
Government Pleader

JUDGMENT

(Order of this Court was delivered by T.S.Sivagnanam, J.)

This appeal by the revenue filed under Section 260A of the Income Tax Act 1961, is directed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai as passed in STA No.305/2002 dated 12.11.2010 for assessment year 1999-2000.

2. The tax case has been admitted vide order dated 16.09.2015 on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the assessment of turnover by including freight charges borne by the head office of the petitioner at Delhi as forming part of the total value of goods executed in the works contract? And
>
> (ii) Whether on the facts and in the circumstances of the case, the tribunal was right in law in affirming the gross profit attributed at 15% on freight charges without any basis?"

3. We have heard Mr.B.Sivaraman for Mr.Lakshmi Sriram, learned counsel for the petitioner and Mrs.Dhanamandhiri, learned Government Pleader for the respondent.

4. The Assessing Officer vide order dated 31.07.2001 held that the transport charges incurred by the petitioner's head office at Delhi while transferring material from Delhi to Chennai for execution of works contract has to be included in taxable turnover. The petitioner/dealer's specific case is that the freight charges of Rs.7,51,762/- has been borne by the head office at Delhi and it is reflected in the books of accounts in the head office at Delhi in the profit and loss statements for the purpose of appropriation of cost of Branch at Chennai.

5. The assessing Officer did not agree with the submissions and in fact, the petitioner/assessee's income to purchase piece offered on the 25% may be added to the taxable turnover, which was also rejected by the Assessing Officer. The assessee has filed an appeal before the Appellate Assistant Commissioner of Commercial Taxes-IV. The First Appellate Authority vide an order dated 27.12.2001 verified the documentary evidence produced by the assessee and allowed the appeal. The revenue carried the matter to the Tribunal which reversed the order passed by the First Appellate Authority vide the impugned order.

6. We have carefully gone through the order passed by the Tribunal and we find that such a lengthy order on such a small issue was totally uncalled for. The brevity is an art of writing

judgements and the manner in which the Tribunal has penned its order is in clear violation of the often propounded theory of brevity. All that the tribunal was required to do is to examine the correctness of the decision taken by the First Appellate Authority, while allowing the appeal after verification of documentary evidence produced by the dealer. Unfortunately, the Tribunal did not do so and did not give any specific finding that the documents produced by the assessee did not reflect what was stated by the dealer before the Appellate Authority.

7. Therefore, in the absence of any such specific finding to discredit the finding of the First Appellate Authority which was rendered after verification of the documents cannot be a reason for allowing the Revenue's appeal. The documents produced by the dealer, verified by the First Appellate Authority shows that the freight was bound by the Head Office at Delhi and shown in the books of account. In fact, the Tribunal does not deny the nature of the transactions and it records that there is no dispute that the goods were brought into the State by the petitioner/dealer from their Head Office at Delhi and utilised in execution of works contract within the state and the goods brought in by the dealer were incorporated into the works contract executed in the State.

8. Thus, for the above reasons the Tribunal erred in reversing the order passed by the First Appellate Authority. Accordingly, the tax case is allowed and the substantial questions of law are answered in favour of the petitioner and the order passed by the First Appellate Authority is restored. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssb/mrm

To

1.The Tamil Nadu Sales Tax
Appellate Tribunal (Main Bench),
Chennai.

2.The Deputy commercial Tax Officer,
Anna Salai II Assessment Circle,
Chennai.

3.The Appellate Assistant Commissioner,
Chennai-2.

4.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Lakshmi Sriram, Advocate, S.R.No. 9363
+1cc to the Special Government Pleader(Taxes), S.R.No.9862

Tax Case No.74 of 2015

AK(CO)
GN(19/02/2019)