IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Revision) Nos.45 to 47, 67 and 68 of 2013

Tvl.Manoharama Films,
2, Sarangapanai Street,
T.Nagar, Chennai - 17. ... Petitioner
in T.C(R)Nos.45 to 47 of 2013

Tvl.Anand Cine Services,
2, Sarangapanai Street,
T.Nagar, Chennai - 17. ... Petitioner
in T.C(R)Nos.67 & 68 of 2013

-vs-

The State of Tamil Nadu,
Rep. by The Deputy Commissioner (CT),
Chennai (Central) Division,
Chennai - 6. ... Respondent
in all the Revisions

Prayer: Tax Case (Revisions) filed under Section 38 of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Chennai dated 30.10.2012 in STA.No.352/2006 for the assessment year 1996-97, and STA.Nos.350, 351, 348 and 349 of 2006 for the Assessment Years 95-96, 97-98, 96-97 and 95-96 respectively as against the order of the Appellate Assistant Commissioner(CT) III, Chennai 108 made in 1. A.P.NO.138 of 2003 dated 12.06.2003, 2.A.P.NO.137 of 2003 dated 12.06.2003, 3.A.P.NO.139 of 2003 dated 12.06.2003, 4.A.P.NO.136 of 2003 dated 11.07.2003, 5.A.P.NO.135 of 2003 dated 11.07.2003 respectively. As against the order of the Deputy Commissioner, Commercial Tax Officer, T.Nagar(North) Assessment Circle, Chennai-28 made in 1.R.C.289/2000/B1/96-97 dated 28.02.2003, 2.R.C.406/97/1995-96 dated 28.02.2003, 3.R.C.289/2000/B1/1997-96 dated 28.02.2003, 4.R.C.288/2000/196/1996-97 dated 28.02.2003, 5.R.C.288/2000/ 1995-1996 dated 28.02.2003 Respectively.

For Petitioner
in all the Revisions : Mr.S.Ramanathan

For Respondent
in all the Revisions : Mr.V.Haribabu
Additional Government Pleader

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

These revisions filed by the petitioner/registered dealer under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) are directed against the common order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Chennai in STA.Nos.352, 350, 351, 348 and 349 of 2006 dated 30.10.2012.

2.T.C(R).Nos.45 and 47 of 2013 have been admitted on 06.11.2013 on the following substantial questions of law:

"1.Whether the Hon'ble Tribunal was correct in holding that in the absence of any lease agreement between M/s.Ravishankar Films and the petitioner it cannot be accepted that the petitioner was a second lessor when the petitioner has filed the assessment order of M/s.Ravishankar Films to the effect that lease receipts received from the petitioner has been assessed to tax?

2.Whether the Tribunal was correct in rejecting the claim of the petitioner as a second lessor when the Tribunal has observed that M/s.Ravishankar Films have been assessed to tax on the hire charges received from the petitioner and that when the Commissioner of Commercial Taxes has clarified that only the first seller or lessor is liable to tax under Section 3A of the TNGST Act and all other subsequent lessors are exempted from tax in letter No.Acts Cell-1/84054/1999 dated 19.11.1999?

3.Whether the Tribunal was correct in restoring the levy of penalty also when the turnover was taken from the Register maintained by the petitioners and that the levy of penalty is against the provision of Section 12(3)(b) Explanation which reads that-

"For the purpose of levy of penalty under clause (b) above, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed on final assessment:-

i) Turnover representing additions to the turnover as per books made by the assessing authority any reference to any specific concealment of turnover from the accounts;

ii) Any turnover estimated by the Assessing Authority with reference to any specific concealment of any turnover from the accounts"?

2.T.C(R).No.46 of 2013 has been admitted on 30.10.2013 on the following substantial questions of law:

"1.Whether the Hon'ble Tribunal was correct in holding that in the absence of any lease agreement between M/s.Ravishankar Films and the petitioner it cannot be accepted that the petitioner was a second lessor when the petitioner has filed the assessment order of M/s.Ravishankar Films to the effect that lease receipts received from the petitioner has been assessed to tax?

2.Whether the Tribunal was correct in rejecting the claim of the petitioner as a second lessor when the Tribunal has observed that M/s.Ravishankar Films have been assessed to tax on the hire charges received from the petitioner and that when the Commissioner of Commercial Taxes has clarified that only the first seller or lessor is liable to tax under Section 3A of the TNGST Act and all other subsequent lessors are exempted from tax in letter No.Acts Cell-1/84054/1999 dated 19.11.1999?

3.Whether the Tribunal was correct in restoring the levy of penalty also when the turnover was taken from the Register maintained by the petitioners and that the levy of penalty is against the provision of Section 16(2) of the TNGST Act which reads that-

"the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer"?

4.T.C(R).Nos.67 and 68 of 2013 have been admitted on 10.04.2014 on the following substantial questions of law:

"1.Whether the Hon'ble Tribunal was correct in holding that in the absence of any lease agreement between M/s.Ravishankar Films and the petitioner it cannot be accepted that the petitioner was a second lessor when the petitioner has filed the assessment order of M/s.Ravishankar Films to the effect that lease receipts received from the petitioner has been assessed to tax?

2.Whether the Tribunal was correct in rejecting the claim of the petitioner as a second lessor when the Tribunal has observed that M/s.Ravishankar Films have been assessed to tax on the hire charges received from the petitioner and that when the Commissioner of Commercial Taxes has clarified that only the first seller or lessor is liable to tax under Section 3A of the TNGST Act and all other subsequent lessors are exempted from tax in letter No.Acts Cell-1/84054/1999 dated 19.11.1999?

3.Whether the Tribunal was correct in restoring the levy of penalty also when the turnover was taken from the Register maintained by the petitioners and that the levy of penalty is against the provision of Section 12(3)(b) Explanation which reads that-

"For the purpose of levy of penalty under clause (b) above, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed on final assessment:-

i) Turnover representing additions to the turnover as per books made by the assessing authority any reference to any specific concealment of turnover from the accounts;

ii) Any turnover estimated by the Assessing Authority with reference to any specific concealment of any turnover from the accounts"?

4.Whether the Tribunal was correct in restoring the levy of penalty also when the turnover was taken from the Register maintained by the petitioners and that the levy of penalty is against the provision of Section 16(2) of the TNGST Act which reads that-

"the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer"?

5.Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent/revenue.

6.The Tribunal by the impugned order has remanded the matter to the Assessing Officer to cause verification of the records. The assessees claimed second sale exemption on the ground that the cinematographic equipments were taken by them from M/s.Ravishankar Films Private Limited, who are the assessees in the books of the Deputy Commercial Tax Officer, T.Nagar (North) and relying upon the clarification issued by the Special Commissioner and Commissioner of Commercial taxes in Lr.No.Act Cell-I/84054/99 dated 19.11.1999 have contended that only the first lessor is liable to tax and all other subsequent lessors are exempted and the assessees being the second lessors are not liable to tax under the provisions of TNGST Act. However, the assessees failed to produce any such document to support their transaction. Before the First Appellate Authority they raised such a stand and the First Appellate Authority by order dated 12.06.2003 allowed the appeals filed by the assessees holding that though the transactions of the assessees are not leasing or hiring and that they got the materials from M/s.Ravishankar Films Private Limited, who are the registered dealers and assessed in the books of the Deputy Commercial Tax Officer, T.Nagar (North) and therefore, they being the second persons are not liable under the provisions of the TNGST Act. The revenue preferred an appeal before the Tribunal against the said order contending that the assessment records of the dealers were verified which revealed the fact that the dealers are unregistered and the dealers themselves accepted that they are not registered dealers under the provisions of the TNGST Act and but for the inspection, this fact would not have been brought to light and they have effected purchase of materials by import from outside the State and they have given to other dealers by collecting lease and hire charges and they have not maintained and produced any books of accounts. Further, it was contended that M/s.Ravishankar Films Private Limited, who are the registered dealers have not paid tax to the Department for the hire charges. With these contentions, the revenue stated that the First Appellate Authority instead of remanding the matter to the Assessing Officer has allowed the appeal which is not acceptable. The Tribunal considered the submissions on either side and agreed with the stand taken by the revenue and set aside the order passed by the Appellate Authority and remanded the matter to the Assessing Officer for fresh consideration.

7.We have perused the order passed by the First Appellate Authority dated 12.06.2003 and we find that there is absolutely no finding as to how the First Appellate Authority was satisfied that the assessees are second persons and that they are not liable to tax under the provisions of the TNGST Act. Though the assessee claims that they have placed documents before the First Appellate Authority, there is no discussion as to the effect of those documents which are in the form of invoices, etc. Furthermore, the revenue has specifically contended before the Tribunal that M/s.Ravishankar Films Private Limited though being the registered dealer have not paid tax to the Department for the hire charges. Thus, we find that there is no error in the order passed by the Tribunal and no specific question of law arise for consideration in these tax case revisions.

8.In the result, the tax case revisions are dismissed and the order passed by the Tribunal is confirmed and the matter stands remanded to the Assessing Officer to give effect to the directions issued by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner (CT),
   Chennai (Central) Division,
   Chennai - 6.

2. The Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench),
   Chennai

3. The Appellate Assistant Commissioner (CT)III,
   Chennai.

4. The Deputy Commissioner,
   Commercial Tax Officer,
   T.Nagar (North) Assessment Circle,
   Chennai-28.

+2cc to Mr.S.Ramanathan, Advocate, S.R.No.687 & 686
+1cc to the Government Pleader, S.R.No.1127

T.C.(R)Nos.45 to 47, 67 and 68 of 2013

SPD(CO)
CS/15/02/2019