

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

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

Tax Case Revision No.19 of 2019
and
C.M.P.No.9117 of 2019

M/s.Rajini Foundations Pvt Ltd.,
No.2, Damodaran Street,
T.Nagar, Chennai-600 017. ... Petitioner/Respondent

-vs-

The State of Tamil Nadu,
Rep., by its Joint Commissioner (CT),
Chennai Central Division, Chennai. .. Respondent/Appellant

Tax Case (Revision) filed under Section 38(1) of the Tamil Nadu Value Added Tax Act and Rules to revise the order dated 10.01.2019 made in STA No.625 of 2016 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai against the proceedings of the Appellate Deputy Commissioner (CT) Chennai Central Chennai made in APU No. 604/2015 dated 30.05.2016.

against proceedings of Commercial Tax Officer, Nandanam Assessment Circle, Chennai made in TIN 33751582332/2013-2014 dated 17.11.2015.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondent : Mr.Md.Saffiq,
Special Govt. Pleader (Taxes)

ORDER

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

This tax case revision filed by the petitioner/dealer under Section 38(1) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act"), is directed against the order in S.T.A.No.625 of 2016, dated 10.01.2019, which was filed by the respondent-State challenging the order passed by the Appellate Deputy Commissioner (CT), Chennai-Central, the first appellate authority in A.P.No.604 of 2015,

dated 30.04.2016.

2.The appeal filed by the State was allowed by the impugned order. To be noted that the petitioner earlier though was served with a notice from the Tribunal, did not appear and was set ex parte on 23.03.2017 and therefore, the Tribunal has proceeded to decide the matter on merits and allowed the appeal.

3.This tax case revision has been filed raising the following substantial questions of law:-

"(a) Whether the assessment made by the Assessing Authority on the levy of purchase tax on the purchases made from unregistered dealers amounting to Rs.57,59,968/- is correct.

(b) Whether the assessment made by the Assessing Authority on the sales suppression arrived at Rs.1,73,06,528/- by set aside by the First Appellate Authority is correct.

(c) Whether the sales turnover arrived at by the Appellants on the purchases from registered dealers and also from unregistered dealers and tax paid on the sales turnover by arriving at Gross Profit to the purchases. Hence levying tax again on the purchases is correct."

4.Heard Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner/dealer; and Mr.Md. Shaffiq, learned Special Government Pleader (Taxes) for the respondent/State.

5.With the consent on either side, this tax case revision is taken up for disposal.

6.The assessment for the year 2013-14 under the provisions of the TNVAT Act was completed under Section 22 of the TNVAT Act. Subsequently, the Assessing Officer issued notice under Section 27 of the TNVAT Act proposing to revise the assessment. One of the reasons being that, on scrutiny of Form-WW certified by the petitioner's Chartered Accountant, the Assessing Officer stated that in Statement No.13, purchase from unregistered dealers is shown as Rs.57,59,968/, but purchase tax under Section 12 was not paid. Apart from that there was one more allegation that the contract income as per P & L account is Rs.5,19,50,000/- whereas, the taxable turnover is shown as Rs.2,07,98,700/- as per Statement No. 12 and the balance sheet shows labour charges as Rs.1,38,44,682/- and there exists shortage of turnover. Therefore, there was a proposal to revise

the deemed assessment under Section 27(1)(a) of the TNVAT Act.

7. The petitioner submitted a reply dated 02.11.2015 stating that they are paying tax on the basis of commodity wise deemed sale value, the deemed sale value is arrived taking into account the purchases made from registered and unregistered dealers plus gross profit thereon and hence, the question of payment of tax on the purchase under Section 12 and contract receipt does not arise. The Assessing Officer rejected the objection filed by the petitioner/dealer and revised the assessment, vide order dated 17.11.2015. The Assessing Officer held that so far as purchases from unregistered dealer are concerned, purchase tax has not been paid by the concerned dealer and the goods involved in works contract, would attract the provisions of Section 12(1)(e) of the TNVAT Act and purchase tax is payable on Rs.57,59,968/-. The petitioner filed appeal before the first appellate authority and the first appellate authority by order dated 30.05.2016 allowed the appeal. Challenging the same, the State preferred appeal before the Tribunal, which was allowed by the impugned order.

8. It is no doubt true that the petitioner did not appear before the Tribunal. Yet the legal requirement is that the correct turnover has to be taxed and by default, the State cannot be permitted to tax a dealer on the turnover which is not taxable. Therefore, we have to examine as to whether the decision of the Tribunal is justified or not. The Tribunal held that so far as the levy of purchase tax under Section 12 of the TNVAT Act is concerned, the use of the word "otherwise" in Section 12(1)(a) of the TNVAT Act would bring the transaction under the said provision and resultantly, the value of goods purchased from unregistered dealer or from unknown sources would attract tax. However, there is a factual finding recorded by the first appellate authority holding that if purchase tax is demanded from the petitioner, it would amount to double taxation.

9. As pointed out earlier, when the petitioner responded to the revision notice by their reply dated 02.11.2015, they took a specific stand that the deemed sale value is arrived taking into account the purchases made from registered and unregistered dealers plus gross profit thereon. However, the Assessing Officer did not deal with the said contention presumably because, the petitioner did not cooperate in the revision of assessment proceedings, as the Assessing Officer has recorded that despite an opportunity of personal hearing granted to the petitioner/dealer, he did not avail the same. However, before the appellate authority, the petitioner canvassed the correctness of the revised assessment and the appellate authority has held as follows:-

"(10) The appellant during the course of hearing has submitted that all purchases including the purchases from unregistered dealers were declared in Annexure-1 to Form-I returns and had claimed input tax credit only to an extent of Rs.12,43,868/- on the purchase value of Rs.1,23,29,850/- from registered dealers. It was also submitted that as against the purchases for Rs.1,23,29,850/- from registered dealers, the appellant had declared a deemed sales turnover of Rs.2,07,98,790/- [Rs.1,15,38,426/- at 5% and Rs.92,60,364/- at 14.5%] and paid tax at the applicable rates of tax on the commodities involved to an extent of Rs.19,19,674/- after availing input tax credit of Rs.12,43,868/- the appellant's submission that the deemed sale value reported in the returns filed includes the purchases from unregistered dealers was verified with reference to the Annexure-1 filed with Form-I [VAT] returns every month and the audit report in Form-WW in the assessment records and found correct. The impugned order subjecting the same turnover at purchase point and sale point would amount to double taxation and liable to be set aside."

10.The Tribunal in the impugned order has not dealt with this issue, which revolves on the factual aspect. The first appellate authority has recorded the petitioner's submission that the deemed sale value reported in the returns filed includes the purchases from unregistered dealer was verified with reference to the Annexure-1 filed with Form-I (VAT) returns every month and the audit report in Form-WW in the assessment records and found correct. The order of the assessing authority is not clear as to whether the first appellate authority undertook a verification exercise or not whereas, the Assessing Officer revised the assessment pointing out discrepancies in Statement No.12. Thus, we are of the considered view that the records need to be verified before the demand is issued to the petitioner. For the above reasons, we are inclined to remand the matter to the Assessing Officer for fresh consideration.

11.Accordingly, this tax case revision is allowed, the order passed by the Tribunal is set aside as well as the order passed by the first appellate authority and the assessment order dated 17.11.2015, and the matter is remanded to the Assessing Officer for fresh consideration to direct the petitioner to produce the entire books of accounts and all records based on which Form-WW was filed and after making a thorough scrutiny, redo the assessment in accordance with law. In the light of the

above, the questions of law raised are left open. The Assessing Officer is directed to issue notice to the petitioner/dealer within a period of fifteen days from the date of receipt of a copy of this order complying with the directions given above. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

abr

To

1.The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench),
Chennai-600 104.

2.The Commercial Tax Officer,
Nandanam Assessment Circle,
Station No.46, Greenways Road,
R.A.Puram, Chennai-600 028.

3.The Appellate Deputy Commissioner (CT),
Chennai-Central,
Commercial Taxes Buildings Annexe, III Floor,
Greens Road, Chennai-600 006.

4.The Joint Commissioner (CT)
State of Tamil Nadu
Chennai Central Division
Chennai

5.The Section Officer
VR Section, High Court, Madras 104.

+1 CC to Mr.M.Md.Ibrahim Ali, Advocate sr 36020.

+1 CC to Spl. Govt. Pleader (T) sr 36491.

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T.C.R.No.19 of 2019

AK(CO)

SP(28/05/2019)