In the High Court of Judicature at Madras

Dated : 27.4.2019

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Revision Nos.21 to 26 of 2019

M/s.Praxair India Private Limited,
Ambattur, Chennai-98. ...Petitioner

Vs

The State of Tamil Nadu, rep.by
the Joint Commissioner (CT),
Chennai (South) Division, Chennai-6. ...Respondent

TAX CASE REVISIONS under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 against the orders dated 14.11.2018 made respectively in T.A.Nos.116, 117, 115, 118, 114 and 119 of 2016 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai respectively for the assessment years 2008-09, 2009-10, 2007-08, 2010-11, 2006-07 and 2011-12.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.V.Haribabu, AGP

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.V.Haribabu, learned Government Advocate accepting notice for the respondent.

2. These revisions are directed under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 (for short the TNVAT Act) challenging the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (for brevity, the Tribunal) dated 14.11.2018 in T.A.Nos.116, 117, 115, 118, 114 and 119 of 2016.

3. Though the Tribunal passed individual orders in respect of the assessment years 2006-07 to 2011-12, since the facts of the case and the orders are identical, these revisions are taken up together for consideration and disposal.

4. The petitioner – dealer has challenged the orders passed by the Tribunal on several grounds and by raising the following substantial questions of law:

> *"i. Whether the action of the Tribunal, being the final fact finding authority, was justified in having passed the impugned orders by mere extraction of the 1st Appellate Authority's orders and with no independent appraisal of the facts or law placed before it ?*
>
> *ii. Whether the Tribunal was right in denying the rightful claim of ITC contrary to Sections 3(2) and 19(2) of the TNVAT Act, 2006 on the face of the fact that tax of 4% was charged by the vendor of the appellant and the same has been duly remitted into the State Exchequer? And*

> *iii. Whether the Tribunal was right in having overlooked the decisions rendered by the Hon'ble Apex Court in 16 STC 563 (SC) J.K.Cotton Spinning & Weaving Mills Vs. Sales Tax Officer and the Hon'ble Gujarat High Court reported in 32 VST 97 (Guj.) AMI Pigments Pvt. Ltd. And others Vs. State of Gujarat on the pari materia analogy?"*

5. Before we venture into the factual matrix and consider the substantial questions of law raised by the petitioner, we are required to examine the manner, in which, the Tribunal disposed of the tax appeals.

6. The Assessing Officer completed the assessment by individual orders dated 31.1.2014. The issue, which fell for consideration was as to whether the assessee was entitled to avail input tax credit on the purchases of furnace oil from oil companies. The Assessing Officer held that the purpose of the furnace oil was only for generating power and hence, no input tax credit was eligible for producing power. The assessee filed appeals before the Appellate Deputy Commissioner (CT), Chennai, who, by separate orders dated 28.12.2015, confirmed the assessment orders. Challenging the same, the assessee preferred appeals before the Tribunal, which, by the impugned orders, dismissed the appeals.

7. Initially, we were of the opinion that the Tribunal passed very reasoned and elaborate orders. However, on a careful scrutiny, we find that the Tribunal did not assign any independent reason for coming to the conclusion that the orders passed by the First Appellate Authority did not call

for any interference.

8. We say so after a careful examination of the impugned orders. By way of illustration, we take up the order passed in T.A.No.114 of 2016. The order passed by the Tribunal runs to 24 pages. Out of 24 pages, pages 1 and 2 give the cause title and the facts of the case. Pages 3 to 15 contain the grounds of appeal raised by the assessee and they have been verbatim extracted in the impugned order. In the bottom of page 15, the point for consideration was framed namely whether the disallowance of input tax credit for Rs.40,18,563/- on the purchase of furnace oil for captive generation of power by the Appellate Deputy Commissioner (CT) is sustainable or not ? From page 16, the Tribunal commences to decide the point for consideration. Pages 16 to 19 contain the contentions raised by the assessee before the Tribunal. Pages 20 to 22 contain the verbatim extraction of the findings given by the Appellate Deputy Commissioner (CT) and the discussion is purported to be commencing from last paragraph in page 22.

9. In our considered view, the Tribunal, being the last Fact Finding Authority in the hierarchy of Authorities, is bound to give independent reasons on the contentions advanced. Admittedly, the Tribunal extracted the contentions advanced by the assessee in the memorandum of grounds of appeal and also noted the oral statement made by the learned counsel for the assessee when the Tribunal heard the appeals. Therefore, the Tribunal is required to deal with the contentions and give independent reasons.

10. Further, in our considered opinion, sufficient reasons have not been assigned by the Tribunal for rejecting the appeals and more particularly when the Tribunal noted all the contentions advanced by the petitioner. Furthermore, the Tribunal, being the last Fact Finding Authority, is also required to give a finding of fact because when the order is tested before this Court in a tax case revision, the Court can consider only a substantial question of law.

11. In the light of the above, we are of the view that the Tribunal should re-hear the matters and pass a reasoned order. We further note that the Tribunal verbatim extracted the grounds of appeal, the arguments of the learned counsel for the assessee and the findings of the First Appellate Authority. Repeatedly, the High Courts have held that the order passed by a Tribunal or an Appellate Authority should give independent reasons. The art of writing judgment or order should be cultivated and brevity is the golden rule. The Tribunal should endeavour to sum up the contentions advanced by the petitioner and set out the same. Thereafter, the Tribunal should note the contentions of the Department, record the same, frame a point for consideration and then discuss each of the points for consideration by taking note of the factual position and applying the legal principles. These are the essentials of judgment writing, which should be borne in mind by the Tribunal. In the light of the above, there is no necessity for us to decide the substantial question of law raised for consideration at this stage.

T.S.SIVAGNANAM,J
AND
N.SATHISH KUMAR,J

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12. In the result, the above tax case revisions are allowed and the impugned orders are set aside. The matters are remanded to the Tribunal for a fresh consideration after taking into consideration the observations made in the preceding paragraphs. The Tribunal shall endeavour to dispose of the matters within a period of three months from the date of receipt of a copy of this judgment. No costs.

27.4.2019

Internet : Yes

To
1.The Joint Commissioner (CT), Chennai (South) Division, Chennai-6.
2.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

TCRNos.21 to 26 of 2019