IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.No.2 of 2018

The State of Tamil Nadu
represented by the
Deputy Commissioner (Commercial Taxes)
Coimbatore Division
Coimbatore -18. .. Petitioner

Versus

Tvl.M.Parvathi Trading Company
37, KVP Layout, Karuvampalayam
Tiruppur. .. Respondent

This Tax Case has been filed under Section 38 of the TNGST Act, 1959, against the order dated 12.06.2002 made in Appeal No.58 of 1998 by the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore against the order of the Appellate Assistant Commissioner(CT) of Pollachi in Appeal No.225/96 dt.20.08.1997 against the orders of the Deputy Commercial Tax Officer, Tiruppur(Central II) in his proceedings in TNGST No.2461525/95-96 dated 11.07.96.

For Petitioner : Mr.V.Haribabu
Additional Government Pleader

For Respondent : Served – No appearance

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The present Tax Case is filed against the findings of Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in respect of Appeal No.58 of 1998 made in its common order, dated 12.06.2002 made in Appeal Nos.58 and 103 of 1998.

2. The brief facts of the case are as follows:-

In respect of the respondent, the Deputy Commercial Tax Officer, Central-II Assessment Circle, Tiruppur in his assessment order in TNGST No.2461525/95-96, dated 11.07.1996 determined a total and taxable turnover of Rs.4,82,375/- against the reported total and taxable turnover of Rs.1,18,525/-.

3. Aggrieved against the said order of the Assessing Officer, the respondent herein preferred first Appeal before the Appellate Assistant Commissioner (CT), Pollachi, who in turn modified the order of the Assessing Officer by following the decision reported in 3 MTCR 83 in the case of “State of Tamil Nadu ..vs.. Gomraj Metal Works” and CTA No.629 of 1990 dated 12.04.1991 in the case of “Sivaraja Trading Company ..vs.. The State of Tamil Nadu”, and ordered to delete the equal addition for probable omission ie., Rs.1,03,730/- at 5% and ordered to confirm the actual stock difference for Rs.1,03,730/- at 5%. In respect of estimation on corresponding purchases, the equal addition for Rs.78,195/- has been ordered to be deleted and the actual purchase suppression is confirmed for Rs.78,195/- at 5%. The penalty under Section 12(3)(b) was also modified to the extent of modification under Tax.

4. Aggrieved against the order of the first Appellate Authority, the respondent herein preferred Second Appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore. The Tribunal allowed the appeal filed by the dealer/respondent herein, for the reasons that the alleged stock discrepancy so arrived at was due to the stock kept together for certain processing as the dealer and its sister concerns were functioning in one and the same place of business and therefore, considering the facts and circumstances of the case and as much as the alleged stock discrepancy found were duly explained along with the material records produced, the Tribunal came to the conclusion that there is no stock discrepancy as had been explained and therefore, the estimation so made on the basis of stock discrepancies are ordered to be deleted and it was also ordered that inasmuch as the entire estimation is ordered to be set aside, the question of levy of penalty does not arise at all.

5. Aggrieved against the order of the second Appellate Authority, the State is before this Court and the following grounds were raised by the State:-

(i) The Tribunal failed to note that for the stock difference noticed at the time of inspection conducted on 26.12.1995, the dealers had given statement that they have no remarks to offer and therefore, the suppressions were in fact in existence as contended by the dealers.

(ii) The Tribunal failed to note that the bought note vouchers bearing Nos.1,2,3,4,5 & 6 dated 26.12.1995 were prepared only subsequent to inspection and entries for the same were made in stock register at pages 20-21 and those records were not produced during inspection on 26.12.1995 and hence, it is quite clear that they were fabricated records subsequent to inspection for the purpose of claim relief in appeal.

(iii)The Tribunal failed to note that the dealers had subsequently accounted for the transactions in the books of accounts, which is not acceptable in view of the decision rendered by the Tamil Nadu Taxation Special Tribunal in T.C.Nos.2252 & 2153 of 1997 dated 08.10.2001 in the case of Suresh Kirtilal Jewellers wherein, it was held that subsequently accounting for do not alter the character of suppressions unearthed during inspection.

(iv) Inasmuch as the levy of tax is quite justified, the consequent levy of penalty is also warranted in this case.

6. The case of the respondent is that they are traders in butter and ghee and have declared their total and taxable turnover at Rs.1,18,523/- and Rs.1,18,525/- respectively for the year 1995-96 under the TNGST Act, 1959.

7. The case of the appellant is that the respondent was investigated by the Enforcement officials of the appellant on 26.12.1995 and they called for accounts and found that the same were not maintained properly and the turnover reported by them was not complete and there were irregularities found. The appellant had found that the respondent have purchased butter through bought notes, but in the bought notes, no correct and complete address of the sellers were found and eventhough separate stock account was maintained, all the goods in the business premises relating to their sister concerns were kept and get mingled with each other and the daybook was not maintained/written properly after 22.12.1995 till the date of inspection and there was a physical and book stock comparison and variation was found and accordingly, stock of ghee as per the stock book was 7500 Kg and at the time of inspection, the actual stock of 8402 Kg was found and hence, there was excess stock of 902 Kg found in ghee. There was purchase omissions and the dealer has purchased butter through bought notes and converted it as ghee. The appellant contended that excess stock revealed purchase suppression of facts. Hence, the respondent is liable under Section 7A and due to the fact of suppression, penalty under Section 12(3)(b) was invoked.

8. Accounts were called for and checked by the inspecting officials by giving final opportunity to the respondent to explain the irregularities found at the time of inspection and no proper explanation was given by the respondent at that time. The appellant has assessed the same and pre-assessment notice was issued to the dealers on 25.06.1996, which was served on the dealers on 28.06.1996 and total taxable turnover was proposed as Rs.4,82,375/- and surcharge and penalty under Section 12(3)(b) was also imposed.

9. The respondent had sent a reply on 04.07.1996 and the same was considered by the Assessment Officer, who imposed a tax of Rs.21,879/- and surcharge of Rs.3,282/- and penalty of Rs.31,382/- is levied at 150% of the unpaid tax.

10. The respondent's claim was that they have purchased butter through various persons through bought notes and the goods got mingled with the sister concerns, which were also having the dealership and the business is conducted at the same premises and they would also submit that the stock of ghee, as per the stock book, was 7500Kg and the actual stock available was 8402Kg and hence, excess was 902Kg, which is due to the mixing up of goods.

11. The respondent and the sister concerns filed Appeals in No. 225 of 1996 dated 20.08.1997 and No.270 of 1996 dated 06.11.1997 respectively for the Assessment Year 1995-96. The Deputy Commercial Tax Officer, Central-II Assessment Circle, Tiruppur in his Assessment Order TNGST No.2461525/95-96 dated 11.07.1996, in respect of M/s.Parvathi Trading Company has determined total and taxable turnover of Rs.4,82,375/- against the reported total and taxable turnover of Rs.1,18,525/- and in respect of M/s.Sekaran Trading Company, they have determined the total and taxable turnover as Rs.5,10,030/- and Rs.64,640/- against the reported total and taxable turnover Rs.4,45,370/- and Nil respectively.

12. Aggrieved by the orders of the first Appellate Authority, the appellant preferred Second Appeals before the Tribunal disputing the turnovers, as hereunder:-
i) CTA 58/98 (1995-96) - Tvl.M.Parvathi Trading Company, Tiruppur.

i. Ghee (+) 902 Kgs. & Gross Profit at 15%	:	Rs.1,03,730.00 @ 5%
ii.Butter 1203 Kgs (Sec.7A) (Purchases Suppression)	:	Rs. 78,195.00
	:	Rs.1,81,925.00
iii. Penalty u/s.12(3)(b)	:	Rs. 15,692/-

ii.CTA 103/98 (1995-96) - Tvl.Sekaran Trading Company, Tiruppur.

i. Ghee (-) 320 Kgs	:	Rs.32,000.00 @ 5%
ii.Lumpsum Addition	:	Rs. 5,000.00
iii.Addition for omission at 1% on Rs.64,000/-	:	Rs. 640.00
		Rs. 37,640.00

13. The respondent would submit that the turnover has been estimated on the alleged stock discrepancy noticed at the time of inspection and the stocks of the respondent and their sister concerns were taken together and thereby, there was discrepancy arrived at and according to the appellant, the details of turnover and shortage of ghee noticed during the inspection is as under:-

M/s.Parvathi Trading Company	(+)	:	902 Kgs
M/s.Sri Kumaran Dairy	(+)	:	500 Kgs
			1,402 Kgs
Less : Shortage in Sekaran Trading Company		:	320 Kgs
Net Excess Stock			1,082 Kgs

14. The respondent would explain that this excess stock is due to the purchase of ghee effected on the day of inspection in the following cases.

M/s.Parvathi Trading Company	:	582 Kgs
M/s.Sri Kumaran Dairy	:	500 Kgs
		1,082 Kgs

15. That apart, the respondent would submit that there was no stock difference and the above discrepancies were noticed by the inspecting officials only due to mingling up of stocks of the respondent and their sister concerns together and the difference noticed. at the time of inspection, has been subsequently brought to the books of accounts and the discrepancies should be cancelled.

16. The respondent would submit that in similar cases, subsequent accounting was accepted and this Hon'ble Court in the case of "State of Tamil Nadu .v. Gomraj Metal Works" reported in 3 MTCR 83, held that the estimation for actual suppression does not arise if the variation is subsequently accounted for.

17. As per the circular, the respondent would submit that, it is not correct to estimate probable purchases of butter on the basis of the stock discrepancies found at the time of inspection and it could be seen that revenue has not proved that there was wilful non-disclosure of the assessable turnover by the dealer for invoking the levy of penalty.

18. It is further seen that the authorities have not recovered any slips or anamath records to substantiate that there were actual suppression of turnover liable to tax. Hence, the circumstances of probable suppression that is estimated, is not at all possible if it is not proved that there

is annexure. The assessing authority has not pointed out any suppression of either purchase or sales.

19. The inspection was carried on 26.12.1995 and the same was verified only on 29.05.1996 and there was a long gap of six months. The respondent have produced connected bought note voucher bearing Nos.1,2,3,4,5, and 6 dated 26.12.1995 for purchasing ghee and the same was found verified and initialed by the Assessing Officer on 25.06.1996 at the time of check of accounts. At the time of check of accounts itself, all the particulars were available with the respondent and the same were also filed before the Assessing Officer for necessary verification and the Assessing Officer has also noted down such details in its notes of check in page No.93 of the Assessment File regarding M/s.Parvathi Trading Company, but they have only implemented the D3 proposals received from the Enforcement Wing, without even considering the facts and figures found in the books of accounts produced by the respondent at the time of verification.

20. That apart, it is also found that the above discrepancies is only due to mingling up of material goods of the respondent with that of their sister concerns, which is also duly pointed out by the Inspection officer at the time of inspection and at the later point of time, the appellant cannot raise the issue and the respondent have also produced bought notes, stock register etc., for substantiating the same and convincing that the alleged stock discrepancy so arrived at was due to the prescribed stock kept together for certain processes as their sister concerns and the respondent were functioning at the same place of business. The matter was considered by the Tribunal and they were convinced and found that there was no stock discrepancy. As the Tribunal has found that there was no suppression by the respondent/dealer regarding the stocks, they have also deleted 1% addition made for defects and the Tribunal has set aside the entire order and held that there was no question of levying of penalty and accordingly, allowed the Appeals.

21. The appellant's grounds of appeal regarding the claim that the bought note vouchers bearing Nos.1,2, 3, 4, 5 and 6 dated 26.12.1995 were prepared only subsequent to the inspection and entries were made in the stock register at page Nos.20 and 21 and they were not produced at the time of inspection are being the disputed facts and this Court in a Revision cannot go into those aspects and there is no question of law involved in this case. It could be seen that the assessment order itself contains lot of infirmities, as per the finding of the Appellate Assistant Commissioner (CT) and he has also modified the discrepancy to Rs.78,195/- at 5%. These are all the facts of the case and We are not inclined to go into the facts and no

case has been made out by the appellant. The Tribunal's order need not be interfered with. Hence, the Tax Case filed by the appellant is dismissed. No costs and the order dated 12/02/2002 made in appeal No. 58/98 by STAT COIMBATORE in confirmed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To

1. The Presiding Officer
   Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench)
   Coimbatore-18.

2. The Appellate Assistant Commissioner(CT),
   Pollachi.

3. The Deputy Commercial Tax Officer,
   Tiruppur (Central -II).

T.C.No.2 of 2018

RP(CO)

RRS(19/08/2019)