

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

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

Tax Case (Revision) No.1 of 2016

M/s.Shree Laxmi Jewellery LTD.,
No.99, Usman Road,
T.Nagar, Chennai - 17. Petitioner

-vs-

The State of Tamil Nadu,
Rep. by The Joint Commissioner (CT),
Chennai Central Division,
Chennai - 6. Respondent

Prayer: Tax Case (Revision) filed under Section 60(1) of the
Tamil Nadu Value Added Tax Act (TNVAT Act) against the order of
the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Chennai dated 13.08.2015 in STA.No.90/2010 for the assessment
year 2006-07.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

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

This tax case revision filed by the assessee under Section
60(1) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is
directed against the order passed by the Tamil Nadu Sales Tax
Appellate Tribunal (Additional Bench), Chennai dated 13.08.2015
in STA.No.90/2010 for the assessment year 2006-07.

2.This tax case revision had been admitted on 27.01.2016 on
the following substantial questions of law:

"1.Whether Tribunal is correct in sustaining the penalty under sec.27(4)(1) of TNVAT Act, when the Assessing Officer levied penalty u/s.27(3) of the Act?

2.Whether the Tribunal is right in remanding the case to decide the penalty in the guise of assessment falls u/s.27(2) oor 27(4) of TNVAT Act, is not sustainable?

3.Whether Tribunal is justified in remanding the penalty, when no findings have been given by the officer on "wilful suppression of turnover"?

4.Whether Tribunal is right in sustaining the penalty under Sect.16(2) of the TNGST Act, on the ground that the assessment was done at lower rate of tax @ 2%, when there is no specific provision under Sec.16 of TNGST Act, to warrant penalty in case of assessment at lower rate of tax?

5.Whether the Appellate Tribunal is correct in confirming the penalty under Sec.16(2) of TNGST Act by holding that turnover, which is originally accepted and assessed at 2% and whereas in revision the same is treated as escapement of assessable turnover as well as assessment at higher rate of tax?"

3.We have heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent.

4.The assessee filed their return for the assessment year under consideration (2006-07) and an assessment order under Section 22(2) of the TNVAT Act was passed on 16.03.2009 determining the total and taxable turnover. On the very same day, the assessee filed revised return wherein they made a clam for input tax credit of Rs.25,86,928/- for the period from January 2007 to March 2007 as against Rs.18,60,521/- claimed originally in the monthly returns. The Assessing Officer by order dated 25.05.2009 rejected the claim under Section 19(11) of the TNVAT Act as the assessee had filed the claim beyond the time limit prescribed. The Assessing Officer went one step further and levied penalty under Section 27(3) of the TNVAT Act. On reading of the assessment order dated 25.05.2009, it is seen that there is no discussion as to how the penalty is leviabale under Section 27(3) of the TNVAT Act. The assessee filed an appeal challenging the said order before the Appellate Deputy Commissioner (CT)-III in APVAT.No.3/2009. The first appellate authority by order dated 02.03.2010 confirmed the order of the Assessing Officer rejecting the claim of input tax credit as being time barred in terms of Section 19(11) of the TNVAT Act. With regard to the levy of penalty under Section 27(3) of the

TNVAT Act, the first appellate authority noted that the revised return having been filed by the assessee voluntarily, it is not the case of non-disclosure and accordingly deleted the penalty. The revenue preferred an appeal before the Tribunal. In the grounds of appeal, the revenue sought to sustain the penalty levied under Section 27(3) of the TNVAT Act. The Tribunal heard the appeal and came to the conclusion that the Assessing Officer wrongly invoked Section 27(3) of the TNVAT Act instead of Section 27(4) of the TNVAT Act and Section 27(4) of the TNVAT Act being a machinery provision, it would operate automatically and the assessee is liable to pay penalty at 50% on the wrong claim of input tax credit in terms of Section 27(4)(i) of the TNVAT Act. After coming to such a conclusion, the Tribunal remanded the matter to the Assessing Officer with a direction to discuss under which section he proposes penalty either under Section 27(3) or Section 27(4) of the TNVAT Act or both and to what percentage penalty is leviable.

5. In our considered view, the Tribunal committed serious error in holding that Section 27(4) of the TNVAT Act would stand attracted. We say so for more than one reason. Firstly, the appeal filed by the revenue was not on the said ground, the only to assist the penalty under Section 27(3) of the TNVAT Act. Consequently, the Tribunal ought to have considered the vital fact that for Section 27(4) of the TNVAT Act to stand attracted the assessee's case revision brought under Section 27(2) of the TNVAT Act. In other words, the Tribunal should record a finding that there has been wrongful availment of ITC or the assessee has produced false bills, vouchers, declaration certificate or any other document with a view to support his claim of input tax credit. So far as the first aspect is concerned, the assessee filed a revised return voluntarily, made a claim that input tax credit. This scheme was rejected on a technical ground that it is beyond the time limit stipulated under Section 19(11) of the TNVAT Act. There is no allegation that the assessee produced false bills, vouchers, declaration certificate or any other document with a view to support the claim. We say so because there is no such allegation in the assessment order. Furthermore, the claim made by the assessee was outrightly rejected by the Assessing Officer as time barred and therefore, there is no allegation that the assessee had wrongly availed input tax credit. Thus, both the contingencies contemplated under sub-section (2) of Section 27 of the TNVAT Act do not stand attracted in the assessee's case. In such circumstances, sub-section (4) of Section 27 of the TNVAT Act can never be applied since the said section would apply only if an order has been passed under Section 27(2) of the TNVAT Act holding that either the assessee has wrongly availed input tax credit or he has produced false documents to support his claim of input tax credit. Thus, the Tribunal erred in passing the impugned order and more particularly going beyond the grounds raised by the

revenue before it.

6.For the above reasons, the tax case revision is allowed and the substantial questions of law are answered in favour of the assessee and consequently, the order passed by the Tribunal dated 13.08.2015 is set aside and the order passed by the Appellate Deputy Commissioner dated 02.03.2010 is restored. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

- 1.The Joint Commissioner (CT),
Chennai Central Division,
Chennai - 6.
 - 2.The Tamil Nadu Sales Tax Appellate Tribunal (Additional
Bench),
Chennai
 3. The Appellate Deputy Commissioner
CT III, Chennai.
- +1 CC to Mr.D.Vijayakumar, Advocate sr 8284

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KAN(CO)
SP(06/03/2019)

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