IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

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

Tax Case (Revision) Nos.48 and 50 of 2014

M/s.Chandra Textiles Ltd.,
1318, Avanashi Road,
Pellamedu,
Coimbatore - 641 004. ... Petitioner in both the Revisions

-vs-

The State of Tamil Nadu,
Rep. by The Deputy Commissioner
of Commercial Taxes,
Coimbatore. ... Respondent in both the Revisions

Common Prayer:

Tax Case (Revisions) filed under Section 38 of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959 r/w. Rule 30 of the TNGST Rules, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 13.11.2013 in CTA.Nos.215/2004 and 227/2004 for the assessment years 1996-97 and 2001-02. against the orders of Additional Appelate Assistant Commissioner (CT) Coimbatore in AP.NO.1007/2004 and 1029/2004 dated 30.04.2004 against the order of Commercial Tax Officer, Peelamedu, North Circle, Coimbatore dated 30.01.2004 for the Assessment Number TNGST No.2120011 for A-Y 1996-97 and 2001-02.

For Petitioner
in both the Revisions :Ms.Hema Muraliskrishnan

For Respondent
in both the Revisions :Mr.Md.Shaffiq
Special Government Pleader

COMMON ORDER

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

These tax case revisions have been filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in C.T.A.No.215/2004 and C.T.A.No.227 of 2004, both dated 13.11.2013.

2.These tax case revisions have been admitted on the following substantial questions of law:

> "a) Whether in the facts and circumstances of the case, the Tribunal is right in restoring the order of the assessing authority and setting aside that portion of the order of the 1st appellate authority which is in favour of the petitioner herein when no appeal/cross-appeal/cross-objection had been filed by the respondent herein?
>
> b) Has not the Tribunal overlooked the fact that a party not appealing from a decision must be deemed to be satisfied with the decision, must be taken to have acquiesced t herein and be bound by it and therefore, cannot seek relief against a rival party in an appeal prepared by the latter and therefore restoration of the order of the assessing officer is wrong?
>
> c) Whether in the facts and circumstances of the case, the Tribunal is right in confirming the action of the assessing officer in levying tax on the transfer of property in dyes and chemicals in the course of inter-state trade or commerce and in the course of export of goods outside the territory of India?
>
> d) Whether in the facts and circumstances of the case, the Tribunal has not erred in overlooking the express deduction contained in Sec.3-B(2)(a) of the TNGST Act, 1959?
>
> e) Has not the Tribunal erred in confirming the levy of tax on the ground that since the process of dyeing has taken place in the State of Tamil Nadu, the situs of sale is within the State when the Apex Court and this Hon'ble Court have repeatedly held that the situs of sale is wholly irrelevant in the case of inter-state sales?"

3.Heard Ms.Hema Muralikrishnan, learned counsel for the petitioner/assessee and Mr.Md. Shafiq, learned Special Government Pleader for the respondent.

4.Five substantial questions of law have been framed for consideration, of which, question No.1 assumes importance because it touches upon the jurisdiction of the Tribunal to restore the order passed by the Assessing Officer when the petitioner/assessee was partially successful before the First Appellate Authority and against that portion of the order, the revenue did not file any appeal before the Tribunal. If this question is answered in favour of the assessee, then there would not be any necessity for answering the other questions which have been framed for consideration. In the case of State of Kerala vs. Vijaya Stores reported in [1978] 42 STC 418 (SC), the question which was raised by Special Leave was whether the Appellate Tribunal as per Section 39(4)(a)(i) of the Kerala General Sales Tax Act, 1963 to enhance the assessment in the absence of any appeal or cross objection by the revenue. The said provision is in parimateria with Section 36 of the TNGST Act.

> "......The normal rule that a party not appealing from a decision must be deemed to be satisfied with the decision, must be taken to have acquiesced therein and be bound by it. and, therefore, cannot seek relief against a rival party in an appeal preferred by the latter, has not been deviated from in sub-section (4)(a)(i) above. In other words, in the absence of an appeal or cross-objections by the Department against the Appellate Assistant Commissioner's order the Appellate Tribunal will have no jurisdiction or power to enhance the assessment. Further, to accept the construction placed by the counsel for the appellant on sub-section (4)(a)(i) would be really rendering sub-section (2) of section 39 otiose, for if in an appeal preferred by the assessee against the Appellate Assistant Commissioner's order the tribunal would have the power to enhance the assessment, a provision for cross- objections by the Department was really unnecessary. Having regard to the entire scheme of section 39, therefore, it is clear that on a true and proper construction of sub-s. (4) (a) (i) of section 39 the Tribunal has no jurisdiction or power to enhance the assessment in the absence of an appeal or cross- objections by the Department.

It is true that the two Bombay decisions reported in Motor Union Insurance Co. Ltd. vs. Commissioner of Income-tax (1) and New India Life Assurance Co. Ltd. vs. Commissioner of Income-tax on which the High Court has relied `have been rendered in relation to section 33(4) of Indian Income Tax Act, 1922 but in our view the said provisions of Income Tax Act in pari materia with the provision of s.39(4) of the Kerala General Sales Tax Act, 1963. Moreover, the Bombay High Court has pointed out in those decisions that section 33(4) merely enacted what was the elementary principle to be found in Civil Procedure Code that the respondent who has neither preferred his own appeal nor filed cross-objections in the appeal preferred by the appellant, must be deemed to be satisfied with the decision of the lower authority and he will not be entitled to seek relief against a rival party in an appeal preferred by the latter. In the first mentioned case the elementary principle is stated at page 282 of the report thus:

> "Apart from statute, it is elementary that if a party appeals, he is the party who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has any grievance, he has a right to file a cross-appeal or cross-objections. But if no such thing is done, the other party, in law, is deemed to be satisfied with the decision. He is, of course, entitled to support the judgment of the first officer on any ground open to him, but he is not entitled to raise a ground so as to work adversely to the appellant and in his favour."

5.The above decision if applied to the facts of the present case, the only conclusion that can be arrived at is to hold that the Tribunal could not have enhanced the assessment since the revenue has not filed appeal against that portion of the order which was held against the revenue. So far as the assessment year 1996-97 is concerned, the First Appellate Authority sustained the assessment on 30% of the turnover, i.e. Rs.32,42,298/- and allowed exemption on the turnover of Rs.75,65,363/- for the assessment year 2001-02. The First Appellate Authority sustained the assessment on 20% of the turnover, i.e., the turnover of Rs.43,54,346/- and allowed exemption on the turnover of Rs.1,74,17,980/-. As against the said finding, the revenue had not preferred any appeal and therefore, the Tribunal fell in error in enhancing the assessment and restoring the order passed by the Assessing Officer in its entirety.

6.In the light of the above, substantial question of law No.1 has to be answered in favour of the petitioner/assessee and against the revenue. As pointed out earlier, the very basis of the order passed by the Tribunal having been held to be without jurisdiction, there is no necessity for this Court to answer the other substantial questions of law which were left open.

7.In the result, these tax case revisions filed by the petitioner/assessee are allowed and the substantial question of law No.1 is answered in favour of the petitioner/assessee and the order passed by the Tribunal is set aside and the order passed by the First Appellate Authority is restored. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner
   of Commercial Taxes, Coimbatore.

2. The Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench),
   Coimbatore.

3. The Additional Apperance Assistant Commissioner,
   Coimbatore.

4. The Commercial Tax Officer,
   Peelamedu North Circle, Coimbatore.

+1cc to Ms.Hema Muraliskrishnan, Advocate, S.R.No.5801
+1cc to the Special Government Pleader, S.R.No.6234

T.C.(R) Nos.48 and 50 of 2014

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CS/08/04/2019