IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

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

Tax Case (Revision) No.17 of 2017

The State of Tamil Nadu,
Rep., by the Joint Commissioner (CT),
Chennai (East) Division,
Chennai-600 006.
... Petitioner/Respondent

-vs-

Tvl.Ingram Micro India Pvt. Ltd.,
No.7, CIPET Hostel Road,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-600 032. ... Respondent/Appellant

Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order dated 28.01.2014, made in S.T.A.No.23 of 2009 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai.

Against the order of the Appellate Deputy Commissioner(CT) (FAC), Kancheepuram order dated 22.10.2008 and made in AP119/2007 and against the order of the Commercial Tax Officer, Guindy, Assessment Circle, 46, Greenway Road, Chennai dated 30.04.2007 and for TNGST/0902745/2003-04.

For Petitioner : Mr.V.Haribabu,
Additional Govt. Pleader (Taxes)

For Respondent : Mr.R.Sridhar

******

ORDER

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

This tax case revision has been filed by the petitioner/State under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai, in S.T.A.No.23 of 2009, dated 28.01.2014, for the assessment year 2003-04.

2.The above revision has been filed raising the following substantial questions of law:-

> "(i) Whether in the facts and circumstances of the case, the Tribunal is right in law in accepting the claim of the respondent that due to downward trend of the market, the mobile phones were sold at lesser value in the absence of any evidence to show that the said goods are sold in a price which is correct price in prevailing the market/trade?
>
> (ii) Whether in the facts and circumstances of the case, the Tribunal is right in not appreciating the section 12 A of the TNGST Act read with Rule 18 C of TNGST Rules which envisaged the Assessing Officer to make a best judgment assessment if a dealer selling the goods at price which abnormally low compared to the prevailing market whereas in the case on hand the dealer has sold the goods at the prices which is lesser than the purchases that too without any convincing evidence?
>
> (iii) Whether in the facts and circumstances of the case, the Tribunal is right in law in appreciating the decision rendered in 105 STC 337 which is not applicable to the present facts as the same is selling the goods sold at price lesser than the purchase price?
>
> (iv) Whether in the facts and circumstances of the case, the Tribunal is right in law in holding that Rule 18 C does not place the burden on the assessee to furnish any evidence on the market price of the goods before the Assessing Officer.
>
> (v) Whether on the facts and circumstances of the case, the Tribunal is right in law in deleting the penalty levied under section 16(2) of the Act."

3.Heard Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the petitioner/State; and Mr.R.Sridhar, learned counsel for the respondent/dealer.

4.The question, which falls for consideration is whether the provisions of Section 16(2) of the TNGST Act would stand attracted to the case on hand. The first appellate authority held in favour of the dealer and set aside the assessment made by the Assessing Officer under the provisions of the TNGST Act for the assessment year 2003-04. A clear factual finding has been recorded that what has been done by the Assessing Officer is purely based on guess work and without conducting necessary work as mandatory under the statute.

5.When the matter was taken up on appeal before the Tribunal, the Tribunal re-examined the factual position and dismissed the appeal filed by the State. The following finding of the Tribunal would be relevant:-

> "..........When the Assessing Officer has not taken into account the factors mentioned in the Rule and he has made assessment of guess by adding 10% to the purchase value, it is held that the finding of the first appellate authority that the assessment made on the disputed turnover on guess work without making any investigation as to the prevailing market rate is liable to be set aside is sustainable. Since the assessment on the disputed turnover is liable to be set aside, and Section 16(2) of the TNGST Act, 1959 is attracted only in case of willful non-disclosure and the consequential levy of penalty is also liable to be set aside. Therefore the order of the first appellate authority requires no interference and the appeal lacks merits and is liable to be dismissed and the point is answered accordingly."

6.Before us, the Revenue has not been able to point out any question of law, as the entire argument put forth are fully based upon the factual position. In a tax case revision filed under 38 of the TNGST Act, we are required to examine as to whether there is any question of law arising for consideration. Since we find none, we reject this tax case revision.

7.For the above reasons, this tax case revision stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//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, Guindy Assessment Circle, Station 46, Greeways Road, Chennai-600 028.

3. The Appellate Deputy Commissioner (CT) (FAC), Kacheepuram.

4. The Joint Commissioner (CT),
Chennai (East) Division,
Chennai-06.

+1cc to Mr.R.Sridhar, Advocate, S.R.No.16265
+1cc to the Special Government Pleader(T), S.R.No.17123

T.C.(R)No.17 of 2017

RV(CO)
NR/28/03/2019