IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM :

THE HON'BLE MR.JUSTICE DR.VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

TAX CASE NO.48 OF 2017

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

-vs-

Tvl.Kayam Exports
No.114/115 Wallajah Road,
Chennai -600 002 .. Respondent

Tax Case (Revision) Petition filed under Section 38 of TNGST Act 1959 to revise the order of Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai dated 30th day of April 2014 passed in TA No.206/2010.

TA No.206/2010;-
filed againt the order of the Appellant Deputy Commissioner (CT)IV, Chennai in Appeal No. and year 10/10/CST, dated 28.10.2010, against the order in CST/618803/2003-2004, dated 22.03.2010 made by the Assistant Commissioner (CT), Chepakkam Assessment Circle, Chennai-6

For petitioner : Mr.Mohammed Shafhiq
Spl.Government Pleader

ORDER
(Order of the Court was delivered by Dr.VINEET KOTHARI, J.,)

The Revenue has filed the above Tax Case Revision aggrieved by the order dated 30.04.2014 in T.A.No.206 of 2010, by which, the Sales Tax Appellate Tribunal was pleaded to set aside the penalty imposition with the following reasons:

> "9. Admittedly it is not in dispute that there was a difference of tax between the tax assessed and tax paid as per

return for the assessment year 2003-04 under the Central Sales Tax Act 1956 and therefore the Assessing Officer had levied a penalty of Rs.419340/- under Sec.9(2A) of the Central Sales Tax Act 1956 red with Sec.12(3)(b) of the Tamil Nadu General Sales Tax Act 1959 being 150% of the tax due on the difference of tax due between the tax assessed and tax paid as per return. Insofar as the levy of penalty is concerned the turnover available in the books of accounts of the appellants were assessed to tax under the Central Sales Tax Act 1956 and no turnovers were drawn out of the books of accounts of the appellants during the disputed year in question. In fact, it is not the case of appellants that there was any specific concealment of turnover and the difference of tax was arrived at from the turnover which were available in the books of accounts. Recently, the Hon'ble High Court of Madras in the case of Indira Industries-vs-State of Tamil Nadu report in 69 VST 139 wherein

> "Pursuant to the inspection conducted at the business premises of the petitioner a manufacturer of industrial noise control machineries and components the assessing officer found that the petitioner had effect first sales of machineries to BHEL Hyderabad and them to the Tamil Nadu Electricity Board, Courtallam and claimed concessional levy of tax at four percent. Based on the Notification, II(1) / Commercial Taxes/19(b-10)/02 dated March 27,2002 during the assessment year 2005-06. The claim was rejected on the ground that the petitioner had not produced necessary Certificate from the Tamil Nadu Electricity Board for claiming concessional rate of

tax. The Appellate Tribunal confirmed the assessment holding that there was no recorded evidenced to establish that the transfer of goods was from Ranipet to Hyderabad and Hyderabad to Courtallam. The Tribunal also held that the penalty under the provisions of Sec.12(3)(b) of the Tamil Nadu General Sales Tax Act 1959 stood attracted since there was difference between the tax assessed and tax paid on a revision petition.

Held that the explanation to Sec.12(3)(b) of the Act specified the turnover which merited to be excluded for the purpose of levy of penalty, one such being the turnover representing addition related to book turnover itself. Only those turnovers which were estimated having reference to a specific concealment invited the penal provisions under the Act. As in the case of the petitioner the turnover in question was very much available in the books of accounts and the assessment was as per the details available in the books of accounts, there was no question of levy of penalty. Therefore, the order of the Tribunal levying penalty under Sec.12(3)(b) of the Tamil Nadu General Sales Tax Act 1959 was to be set aside."

10. From the reading of the above decision of Hon'ble High Court of Madras it is clear that the levy of penalty under Sec.12(3)(b) of the Tamil Nadu

General Sales Tax Act 1959 together with Explanation 1 to Sec.12(3)(b) of the Act was considered and the explanation to Sec.12(3)(b) of the act specifies the turnover which merited to be excluded for the purpose of levy of penalty, one such being the turnover representing addition related to book turnover itself and the turnover which are already available in the books of accounts ought to be excluded and only those turnover which are estimated having reference to a specific concealment alone, the purpose of addition, invites the penal provisions under the Tamil Nadu General Sales Tax Act 1959. In the instant case, in fact the turnovers in question is very much available in the books of accounts and it is not a case of specific concealment of turnover and then the assessment order passed on the appellants was based on the details available in the books of accounts. The above case law relied on by the counsel for the appellant is squarely applicable to the facts of the present case on hand. Following the principles laid down in the case law referred to above to the fact of the case on the hand we are of the considered view that the order of the first appellate authority sustaining the levy of penalty is not in order and sustainable and hence we hereby hold that the order of the first appellant authority sustaining the levy of penalty is ordered to be set aside and not sustainable. Thus, the point is answered accordingly.

In fine, the Tribunal appeal stands Allowed."

2. After hearing the learned counsel for the petitioner/revenue, we are of the opinion that no question of law raises in the present tax case revision. The learned Tribunal has recorded the finding of the fact that the turnover in question is very much reflected in the books of accounts and there is no justification for imposition of penalty for concealment of turnover. The said facts as found do not give rise to any question of law.

3. Therefore, the tax case revision, filed by State has no merit and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

Note: Registry is directed to communicate a copy of the order to the respondent/ assessee.

To

1. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai

2. The Appellate Deputy Commissioner, (CT)-IV, Chennai.

3. The Joint Commissioner (CT), Chennai (East) Division, Chennai.

4. The Assistant Commissioner(CT), Chepakkam Assessment Circle, Chennai-6.

5. Tvl.Kayam Exports
No.114/115 Wallajah Road,
Chennai -600 002.

+1cc to the Special Government Pleader, S.R.No.97799

T.C.No.48 of 2017

RJI(CO)
CS/07/01/2020