BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI

T.C.(MD)No.13 of 2018

Tvl. Sri Renuka Leather Traders
114 Varadhapurami
Kovilur Post : Appellant

Vs.

The State of Tamil Nadu rep. by
The Deputy Commercial Tax Officer (Rural)
Dindigul : Respondent

PRAYER: Tax Appeal is filed under Section 37(2) of the TNGST Act, 1959 against the order of the Joint Commissioner - III (SMR) of Commercial Taxes, Office of the Commissioner of Commercial Taxes, Chepauk, Chennai -5, in Ref. M3/48906/97:SMR No.24/98 dated 01.12.2005.

For Appellant : Mr.A.Chandrasekaran

For Respondent : Mr.A.K.Baskarapandian
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This tax case has been filed by the appellant dealer under Section 37(2) of the Tamil Nadu General Sales Tax Act (In short "TNGST Act") challenging the order passed by the Commissioner -III, (SMR), Chennai dated 01.12.2005, by exercising its suo motu powers under Section 34 of the Act.

2.The assessment is for the year 1994-95. The appellant is a dealer in Tanned skins etc and for the assessment year under question, he claimed exemption in the turnover in Form I return. The accounts of the dealer was called for and examined and defects were noticed, which were pointed by the Assessing Officer. Subsequently, the place of business of the dealer was inspected by the Enforcement Wing on 08.03.1995 and a proposal was sent in Form D-3 dated 16.10.1995. This resulted in revision notice being issued to the appellant based on the findings rendered by the Inspection

Wing Officer. The dealer, though received the notice, did not submit their objections and therefore, the Assessing Officer confirmed the proposal in the notice and assessed the turnover. While doing so, the Assessing Officer added the suppression, which was pointed out in the report of the inspecting team officers and also added the turnover for probable suppression. The dealer filed appeal before the Assistant Commissioner (CT), Madurai, which was taken on file in Appeal No.AP351/96. The first appellate authority partly allowed the appeal and modified the assessment order by order dated 10.04.1997. During the course of inspection, three slips were recovered, which were the basis for revision of assessment. The first appellate authority considered the matter and so far as item No.1 is concerned, that is pertaining to slip No.1, the finding rendered by the Assessing Officer was sustained. With regard to Item Nos. 2 and 3, the first appellate authority observed that the dealer proved that the transaction has been duly accounted for in the accounts and addition of the same value to the transaction will amount to double taxation. Therefore, the actual suppression as per Slip No.2 added by the Assessing Officer was deleted. Consequently, the corresponding estimated total from the sales, two time addition was also deleted. Further the penalty was also proportionately reduced. The Joint Commissioner of Commercial Taxes, Chennai exercised suo-motu powers under Section 34 of the TNGST Act and proposed to interfere with the order passed by the first appellate authority.

3. A show cause notice dated 29.01.1998 was issued to the dealer calling upon him to explain as to why the order of the Assessing Officer dated 29.03.1996 should not be restored. In the said show cause notice, the reason as to why the Joint Commissioner proposes to exercise his powers under Section 34 of the Act was mentioned. The dealer was represented by a counsel before the authority, who reiterated the stand taken in the reply dated 19.02.1998. It was submitted that there was no suppression in their accounts and therefore, the first appellate authority has deleted the actual and estimated addition. The Joint Commissioner did not agree with the submissions made on behalf of the dealer and modified the order passed by the first appellate authority by confirming the addition at equal times to the actual suppression and also the penalty on actual suppressions. Accordingly, the order of the first appellate authority stood modified. Challenging the same, the dealer is before us by way of this tax case appeal raising the following questions of law:-

a. Whether the Joint Commissioner is correct in setting aside the order of the Appellate Assistant Commissioner (CT), Madurai (North) and restoring the order of the assessing officer without properly appreciating the grounds on which the appellants appeal before the Appellate Assistant Commissioner (CT), Madurai (North) was allowed?

b.Whether the Joint Commissioner is correct in exercising the powers conferred under Section 34 of the Act in a casual manner when the lower appellate authority has given elaborate findings for allowing the appeal?

c.Whether the Joint Commissioner is correct in holding that the appellant admitted before the Officers of the Enforcement Wing that the entries in the slips were not accounted and therefore they are to be treated as suppressions even if they were accounted for subsequent to the inspection?

d.Whether the Joint Commissioner is correct in coming to the conclusion that the appellant's accounts are incorrect when the first appellate authority has given a categorical finding that the entries in the slips were all duly accounted for in the books of accounts?

e.Whether the Joint Commissioner is correct in distinguishing the facts of the case reported in 3 MTCR Page 82 with that of the appellant's case when he is bound to follow the Principle laid down in the case law relied on by the appellant?

4. We have heard Mr.A.Chandrasekaran, counsel for the appellant and Mr.A.K.Baskarapandian, Special Government Pleader, appearing for the respondents.

5. This appeal pertains to only the finding rendered by the first appellate authority in Item Nos.2 and 3. As already pointed out insofar as item No.1 is concerned, the first appellate authority held against the dealer and the dealer has not filed any appeal against the said order. Though five questions of law have been framed by the appellant dealer, it would suffice for this Court to answer the question as to whether if after the inspection, if the suppression turnover has been accounted for and tax has been remitted, whether there can be any addition on the ground of probable omission ? This question was answered in favour of the dealer by the Division Bench in the case of ***The State of Tamil Nadu rep. By the Deputy Commissioner of Commercial Taxes, Madras - 1 v. Tvl. Gomraj Metal Wares, Madras*** reported in ***1993(3) MTCR (DB) 82.***

6. In the said case, the factual position as found by the Tribunal was that the assessees, subsequent to the inspection have brought the stock found to have been deficit into the accounts and properly accounted for the same and thought but for the inspection, there was scope to assume that the goods found to be deficit at the time of inspection would not have been brought into account, the claim for actual suppressions could not be said to exist thereafter. While considering this question, the Hon'ble Division Bench pointed out as follows:

> "7........... As pointed out by the Tribunal, though certain defects were noticed at the time of inspection with consequent stock variation and deficit, the same was consequently brought into accounts and properly explained and this factual finding not seriosuly under challenge before us. If the factual position is as found by the Tribunal that the assessees, subsequent to the inspection have brought the stock found to have been deficit into the accounts and properly accounted for the same and thought but for the inspection ther was scope to assume that the goods found to be deficit at the time of inspection would not have been brought into account, the claim for actual suppressions could not be said to exist thereafter. Once the goods or stock found to be deficit at the time of inspection, has been brought into account before assessment the question of working out the suppressions does not arise and if at all there is any case for addition it is only on account of the defects noticed in the accounts and an addition for probable omissions on account of the defective method of accounting, if any, noticed. It is only for such defects and on weighing the nature and gravity of the defects, the first Appellat authority as well as the Tribunal thought fit to hold that an overall addition of 10 per cent to the turnover as disclosed in the books would suffice the ends of justice in this case. In view of the above, we cannot come to the conclusion that the Tribunal has committed any patent error of law or could be said to be guilty of perversity of approach in substituting an overall addition of 10 percent to the books turnover in lieu of the formula adopted by the Assessing Officer.

7. The above decision would apply equally to the facts and circumstances to the case of the dealer, since after the inspection was conducted, the dealer has brought into the books of accounts, the suppression turnover and tax has been remitted. In such circumstances, there is no scope to assume that the goods found to be deficit at the time of inspection would not have been brought into account, the claim of actual suppression cannot be said to exist thereafter. As before the Hon'ble Division bench, in this case also, the first appellate authority has not granted full relief to the appellant, but has modified the order passed by the assessing officer. In the light of the above, we find that the order passed by the Joint Commissioner calls for interference.

8. In the result, the Tax Case appeal is allowed and the question, which we have framed above, is answered in favour of the appellant dealer. Consequently, the questions of law framed by the

appellant, as quoted above, are not required to be answered and the order passed by the Joint Commissioner is set aside and the order passed by the first appellate authority is restored. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1. The Joint Commissioner – III (SMR) of Commercial Taxes,
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai -5,

2. The Deputy Commercial Tax Officer (Rural)
Dindigul.

+1CC TO MR.P.RADHAKRISHNAN, Advocate Sr. No.97100
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 97742

Order made in
T.C.(MD)No.13 of 2018
Dated: 08.11.2019

SCR(CO)
TR(04.12.2019) 5P 5C