IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.02.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.26984 of 2005

Tvl.Manohara Saraswathi Glass Works,
rep. by its Partner, Kuthalam Village,
Gopurarajapuram Post,
Nannilam, Nagapattinam District. ... Petitioner

Vs.

1. The Tamilnadu Taxation Special Tribunal,
rep. by its Registrar,
Singaravelar Maaligai,
Kamarajar Salai, Chennai - 600 001.

2. The Sales Tax Appellate Tribunal,
rep. by its Secretary,
City Civil Court Buildings, II Floor,
Chennai - 600 104.

3. The Deputy Commercial Tax Officer,
Nannilam, Nagapattinam District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the records of the 2nd respondent in TMP.No.537 of 1994 in TA.No.269 of 1994 dated 28.11.2003 and quash the same as illegal, arbitrary and against the facts of the case.

For Petitioner : Mr.K.Soundararajan
For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader

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

The Assessee - Tvl.Manohara Saraswathi Glass Works Kuthalam Village, Gopurarajapuram Post, Nannilam, Nagapattinam District has filed this Writ Petition aggrieved by the order dated 28.11.2003 allowing the Appeal filed by the Revenue and enhanced the estimate turnover of the Assessee, who is engaged in the manufacture of Sodium Silicate on the basis of fuel consumption made by the Assessee. The relevant findings of the Tribunal with regard to the said issue are quoted below for ready reference.

"12.Point No.2 The Assessing Officer found that to produce 1664 kgs. of Solid Sodium Silicate. Fuel gas consumed at the time of survey was 237-800 cubic Metre, that the total fuel gas consumed for the period from 1.4.91 to 31.12.91 as per accounts was 4,82,677 cubic metre and that therefore the dealers would have produced 3377521 kgs. of Solid Soidum Silicate, whereas the quantity produced as per accounts was to the extent of 27,85,405 kgs. only and that therefore the dealers should have suppressed the sale of 6,01,916 kgs. of Sodium Silicate was fixed at Rs.28,04,929/- and this was assessed to tax as turnover suppressed. The Appellate Assistant Commissioner deleted the above turnover by adopting a different method. He found that out of the 9,30,400 kgs. of Soda Ash consumed during the period from 1.4.91 to 31.12.91, the quantity of Sodium Silicate that would have been produced worked out to 19,19,860 kgs, of Sodium Silicate which was short of 15,392 kgs. to the expected quantity and that the difference was less than 2%. Therefore, he deleted the turnover added to the books of accounts. In the Enhancement petition filed by the State, the State has contended that the dealers had accepted the ratio of the fuel gas consumption arrived at by the Survey Officer, that they had not expressed any difficulty experienced by them in the consumption of gas, that the Assessing Officer has furnished facts and figures to show that the other units have shown higher production than the appellants unit, that it is not known how there could be fall in production in respect of the appellant's unit, that the sample survey conducted with reference to the gas consumption would form the basis for making a best judgment assessment as per the decision in the case of Kalyani Oil Mills Vs. State of Madras reported in 32 STC P.542, that the learned Appellate Assistant Commissioner's methodology of arriving at the difference may not be viable and that therefore the estimation made by the Assessing Officer require restoration. The learned counsel for the appellants at the time of hearing argued that the case study could not be accepted as true and correct in view of the following reasons:

1. The Gas supplied to the factory will not be uniform pressure at all time. The production will not also be equal during high and low pressure period.

2.For the supply of thicker silicate liquid, additional sand is used for melting and thereby the consumption of gas will be more at the time of low pressure.

3.The raw material Soda Ash purchased are in two forms. One as power and another in Kurunai form. The consumption of gas will be more while melting Kurunai form than sequired for powder form.

4.In case of Electricity power failure, the gas in addition to the normal use in the Furnace and Boilers, had to be used for the purpose of generating the power for running the machineries by the use of Generator maintained for this purpose. This important factor was not taken into account by the Survey Officer.

5.During the time of minor repair in the furnace, the work has to be stopped and to be re-started again after rectifying the repair noticed. During this period, the gas consumption will be more to bring the furnace to normal level.

6.To load the Sodium Silicate liquid in the Tankery without any difficulty gas is again used for reducing the thickness of the liquid.

He argued that in view of the above facts, the estimation could not be based on the consumption of gas and that the Appellate Assistant Commissioner correctly set aside the estimation and made a fresh calculation and allowed the same since the difference found by the Appellate Assistant Commissioner was below 2% of the permitted difference in stock. We perused the records. The contentions of the appellants that the gas supplied to the factory will not be uniform at all time and so the production will not be equal during high and low pressure period, that the consumption of gas will be more while melting granules form of Soda Ash than required for power form of Soda Ash, and that in case of electricity power failure, gas was under for the purpose of generating power etc. were not accepted by the Assessing Officer as he verified the contentions with reference to the consumption of gas and production in respect of their sister concerns which were also subjected to survey. In all the 3 sister concerns, the production for the whole year period was higher than the production achieved during the survey period.

Name of the Unit	Fuel Gas Consu-med	Sodium Sili cate	Total Gas Consumed upto 31.12.91	Quantity of Sodium Silicate that should have been produced	Actual Quantity produced upto 31.12.92	Differ ence
1.Sowbakiya lakshmi Silicate, Kuthalam.	213.79 C.M.	1496 kgs.	440639 C.M.	3083381 kgs.	3776079 kgs.	(+) 692698 kgs.
2.Sri Jeya Devi Industries, Kuthalam	651.66 C.M.	4560 kgs.	419729 C.M.	2937060 kgs.	3085605 kgs.	(+) 148545 kgs.
3.Mahashri Aruna Chemicals, Kuthalam	488.75 C.M.	3420 kgs.	454861 C.M.	3182864 kgs.	3204785 kgs.	(+) 21921 kgs.

Taking into consideration the results of the survey conducted at the appellants place of business and in the other 3 factories located in the same area which are also stated to sister concerns of the appellants, we come to the conclusion that the addition made to the book turnover on the basis of the survey results was proper and the Appellate Assistant Commissioner was not proper in deleting the addition. The decision taken by the Karnataka High Court in the case of Shanmuga Oil Mills Vs. Commissioner of Commercial Taxes, Karnataka (91 STC 100), wherein the Karnataka High Court held that normally when a machinery is run by electricity to achieve the end products, the consumption of the electricity energy certainly has a correlation to the output of the end product or the quantum of end product and if the consumption is more, than the end product must also increase and if the consumption is less, the end product must also decrease in quantum and in the absence of other materials this was a sound basis for fixing the turnover, supports our view. Similar view has been taken by the Madras High Court, in the case of Madurai Soft Drinks (Private) Limited Vs. The State of Tamilnadu reported in 60 STC 94. In fine, we restore the assessment on a turnover of Rs.28,04,929/-.

2.Against the assessment order dated 13.01.1993 for the assessment period 1991-1992, the Assessing Authority made the additions to the declared turnover of the Assessee on the same basis of fuel consumption estimate on the basis of Survey Reports during the course of Survey made by the Revenue Authorities. The First Appellate Authority however granted the relief to the Assessee vide his order dated 29.11.1993 and held that in place of fuel consumption, the quantum of raw materials consumed by the Assessee viz., Soda Ash, should have been taken over for estimating the production and turnover of the Assessee and according to that calculation, the First Appellate Authority has found that since the difference was less than 2% only, the declared turnover of the Assessee ought to have been accepted by the Assessing Authority. While so, the Assessee also preferred the Second Appeal in the Sales Tax Appellate Tribunal on some issues. The Revenue filed cross appeal for enhancement of the estimate turnover against the said order of the First Appellate Authority, which came to be allowed by the learned Tribunal for the aforesaid reasons.

3.Aggrieved by the same, the Assessee has preferred this Writ Petition in this Court.

4.The learned counsel for the Assessee Mr.K.Soundararajan relying upon the decision of the Allahabad High Court in Mahabir Prasad Jagdish Prasad V. Commissioner of Sales Tax, U.P. [Vol.XXVII S.T.C. 337 (1971)] submitted that the estimate of the turnover on the basis of fuel consumption was not justified and the First Appellate Authority had rightly concluded on the basis of consumption of the raw material, the turnover at much lesser figure and declared turnover of the Assessee was accepted.

5.The learned Special Government Pleader for the Revenue however supported the impugned order.

6.In the decision relied upon by the learned counsel for the Assessee, the Division Bench of the Allahabad High Court held that merely the high consumption of electricity by the Assessee cannot be held to be a material justifying the rejection of the accounts particularly when the Assessee's accounts had been once accepted during the course of regular assessment proceedings. The findings of the Court in the said matter are quoted below for ready reference.

> "The account books of an assessee cannot be rejected on mere suspicion or conjecture unless the accounts are kept in such a way that reliance cannot be placed upon them. If the method of accounting followed by the assessee is so defective that there is a possibility of suppression and leakage, the accounts can be rejected without any further material. But, if the

> accounts are properly maintained with all the relevant details, it is necessary for the assessing authority to place on record some material to show that the accounts are not reliable. The fact that the consumption of electricity shown by the assessee was unduly high can give rise to a strong suspicion that the assessee might have suppressed its production and thereby might have understated its sales. But, suspicion, howsoever strong it may be, cannot take the place of positive material. Even if the Sales Tax Officer is able to detect one instance where the assessee might have understated its sales, he would be justified in rejecting the accounts and making an estimate of the escaped turnover. But the high consumption of electricity alone cannot be held to be a material justifying the rejection of the accounts particularly when the assessee's accounts had once been accepted during the regular assessment proceedings."

7.Having heard the learned counsel for the parties, we are of the opinion that the reasons assigned by the learned Tribunal in its order to sustain the assessment order in the present case and to set aside the order of the First Appellate Authority are cogent and reasonable. The learned Tribunal has not only relied upon the consumption of fuel by the Assessee to arrive at the estimation of the production and escaped turnover, but has also compared the figures of the sister concerns of the Assessee in the present case, whose production was shown to be much higher during the same contemporary period on the basis of fuel consumption only. The units in question whose cases were compared are also located in the same place in Kuthalam, where the Assessee's unit is also established. It cannot be denied that one of the yardsticks to estimate the production and turnover can be made in fuel consumption as well, the other factors like electricity consumption, consumption of raw materials etc. are also relevant, but it cannot be said that estimation on the basis of fuel consumption is per se liable to be rejected, particularly when the Assessee failed to establish that due to that yardstick of fuel consumption applied, it has resulted in a perverse finding by the learned Tribunal. Merely raising a defence like that the pressure of the gas/fuel supplied to the Assessee was not even at all the time etc. is not enough. No facts, figures or data with respect to such gas supplied, have been placed on the record of the Assessing Authority to upset the findings given by the Assessing Authority, which have been restored by the learned Tribunal. The learned Tribunal, being the final fact finding body, was entitled to adopt the said criteria in the Second Appeal filed by the Revenue. The said findings of facts unless they are demonstratively shown to be perverse are otherwise binding on this Court, particularly in the writ jurisdiction, invoked by the Assessee. We are not inclined to reverse the view of the Tribunal because we find that the reasons assigned by the learned Tribunal are plausible, reliable and cogent. Once the best judgment assessment is made by the Assessing Authority or even higher Appellate Authorities rejecting the books of accounts for the declared turnover by the Assessee, they are entitled to adopt one or more of such parameters or yardsticks to estimate the production and turnover of the Assessee. Therefore, the basis adopted by the learned Tribunal cannot be said to be per se wrong and estimate of turnover based upon such calculations cannot be held to be perverse.

8.In this view of the matter, we do not find any merit in the writ petition and the same is liable to be dismissed and is accordingly dismissed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Sgl
To

1.The Registrar,
The Tamilnadu Taxation Special Tribunal,
Singaravelar Maaligai,
Kamarajar Salai, Chennai - 600 001.

2.The Secretary,
The Sales Tax Appellate Tribunal,
City Civil Court Buildings, II Floor,
Chennai - 600 104.

3.The Deputy Commercial Tax Officer,
Nannilam, Nagapattinam District.

+1 CC to Mr.K.Soundararajan, Advocate sr 11890
+1 CC to Govt. Pleader sr 12905.

W.P.No.26984 of 2005

RSV(CO)
SP(14/07/2020)