IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.39581 OF 2002

The State of Tamil Nadu
Rep by Deputy Commissioner (CT)
Chennai East Division
Chennai - 600 006 ...Petitioner

Versus

1. Tvl. Pratap Steels Ltd
76, Kappal Bolu Chetty Street
Chennai - 600 021

2. The Secretary
Tamil Nadu Sales Tax Appellate Tribunal (AB)
Chennai - 600 104 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the second respondent pertaining to the order dated 16.11.2000 made in T.A. No. 225 of 2000 and quash the same as illegal.

For Petitioner : Mr.Prashanth Kiran
Government Advocate (Taxes)

For Respondents : WP against R1 dismissed
as per Order dated 26.08.2011

R2 - Tribunal

ORDER

(Order of the Court was delivered by R. Mahadevan, J.)

Challenging the order dated 16.11.2000 passed by the second respondent / Tamil Nadu Sales Tax Appellate Tribunal, in T.A. No. 225 of 2000, the Revenue has come up with this writ petition.

2. The first respondent herein is an assessee on the file of the petitioner herein. They were assessed under the Central Sales Tax Act, 1956 on a total and taxable turnover of Rs.1,67,588.75 for the assessment year 1992-1993. While so, on 31.03.1994, the place of business of the assessee was inspected by the Enforcement Wing officials. During the course of such inspection, it was noticed that the assessee had imported MS scraps during the year 1993-1994 and out of the imported goods, they had given 1000 MTs of scraps on loan basis to M/s.East Coast Steels Limited, Pondicherry. Subsequently, they had received 50 MTs of scrap as return on loan given during the earlier years. The inspection further unfolded that while entrusting the scraps imported on loan basis, the assessee had obtained security and the security was given back, when the scrap was returned. According to the petitioner / Assessing Officer, such practice was unknown in the trade parlance and the same being adopted to deceive tax. The inspection conducted further revealed that the assessee, after importing MS scraps, had sold the excess scraps that they did not require for their immediate use to other rolling mills, for consideration. It was also noticed that there was a transfer of a sum of Rs.50 lakhs from M/s. East Coast Steels Limited, Pondicherry as deposit in favour of the assessee. Therefore, the petitioner treated the so-called loan transaction of 1000 MTs of MS scrap by the assessee to M/s. East Coast Steels Limited, Pondicherry and receipt of Rs.50 lakhs at the rate of Rs.5000/- per MT during the year 1992-1993 as inter-state sales, liable to tax at 8% in the absence of "C" forms. That apart, they imposed penalty of Rs.6 lakhs for non-disclosure of the said transaction in their returns and for not paying the tax thereof.

3. The assessee preferred an appeal before the Appellate Assistant Commissioner (CT), assailing the levy of tax as well as penalty, which was dismissed on 17.11.1999. A further appeal was filed before the Tribunal and the Tribunal refused to interfere with the order of assessment passed by the Assessing Officer treating the transaction in question as direct inter-state sales and dismissed the appeal on 16.11.2000. However, the Tribunal modified the imposition of penalty of Rs.6 lakhs levied by the Assessing Officer to Rs.3 lakhs. Aggrieved by the order of the Tribunal insofar as it relates to reduction of penalty to 50%, the present writ petition is filed by the Revenue.

4. The learned Government Advocate (Taxes) appearing for the petitioner / Revenue would contend that the Tribunal ought not to have reduced the penalty imposed by the Assessing Officer to 50%. According to him, the assessee did not voluntarily disclose the sale transaction in question; the undisclosed transaction of the assessee came to light only during the

inspection by the Enforcement Wing officials; and therefore, the reduction of penalty was not called for. The learned counsel therefore prayed this Court to set aside the order of the Tribunal and to restore the order passed by the Assessing Officer.

5. Heard the learned Government Advocate (Taxes) appearing for the petitioner / Revenue and also perused the materials available on record.

6. The only question that arises for consideration in this writ petition is, whether the Tribunal is justified in reducing the penalty amount imposed by the Assessing Officer to 50%, while deciding the appeal filed by the assessee.

7. It is seen from the order impugned herein, the Tribunal after analysing the entire materials available before it, has confirmed the tax levied by the Assessing Officer as confirmed by the Appellate Authority, but modified the penalty by refixing it at 50% of the tax due by reducing from Rs.6 lakhs to Rs.3 lakhs. It is needless to state that the Tribunal is a statutory body and it in exercise of its jurisdiction, may reduce or waive the amount of penalty imposed on the assessee. Therefore, the Tribunal considering the facts and circumstances of the present case, has reduced the penalty imposed by the Assessing Officer against the assessee to 50%, which cannot be found fault with, in the opinion of this court.

8. In the result, the Writ Petition filed by the Revenue fails and accordingly it is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

dhk/rsh

To

1.The Secretary
Tamilnadu Sales Tax Appellate Tribunal (AB)
Chennai - 600 104

2.The Deputy Commissioner (CT)
Chennai East Division, Chennai -6.

W.P. No. 39581 of 2002

KSM(CO)
RVM(24/01/2022)