IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

TAX CASE REVISION NOS.73 TO 75 OF 2019

The Appellate Assistant Commissioner (CT),
Commercial Taxes Department,
Puducherry. ...Petitioner in all cases

Vs

M/s.Surya Service Station,
Main Road, Palloor,
Mahe - 673 333. ...Respondent in TC(R).73/2019

M/s.Mahe Auto Fuel Enterprises,
Parakkal, Mahe - 673 310. ...Respondent in TC(R).74/2019

M/s.Mahe Beach Trading Co.,
Parakkal, Mahe - 673 310. ...Respondent in TC(R).75/2019

Common Prayer:-

Revisions under Section 60 of PVAT Act, 2007 to set aside the impugned order dated 23.11.2018 in Tax Appeal Nos.40, 39 and 38 of 2017.

Appeal filed against the order of the Appellate Assistant Commissioner (CT) Commercial Taxes Department, Puducherry, Mahe, dated 30.09.2002 A.S.No.65, 64 and 23 PGST 2016-17, AAC 7.9.17 dated 11.09.2017 against R1 Assessment order 30.09.2002, 30.09.2002, 20.12.2001 made in PGST 501143/97-98, 501015/97-98, 501014/97-98 on the file of Commercial Tax Officer, Mahe.

For Petitioner : Ms.V.Usha, AGP (Puducherry)

For Respondents : No Appearance

COMMON ORDER
(Made by T.S.Sivagnanam,J)

These Tax Case Revisions have been filed by the Commercial Taxes Department under Section 60 of the Puducherry Value Added Tax Act, 2007 ('PVAT Act' for brevity) challenging the orders passed by the Puducherry Value Added Tax Appellate Tribunal in Tax Appeal Nos.40, 39 and 38 of 2017.

2. We have heard Ms.V.Usha, learned Additional Government Pleader (Puducherry) appearing for the petitioner. In T.C.(R). No.73 of 2019, notice to the respondent has returned with the endorsement "closed down". In T.C.(R).Nos.74 and 75 of 2019, though the names of the respondent have been printed in the cause list, none appears on behalf of them.

3. The questions, which have been raised for consideration in these appeals, are identical, which are as follows:

> "1. Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of Pondicherry General Sales Tax Act, 1967 before reducing the penalty from 150% to 75% of the disputed tax.
>
> 2. Whether the Appellate Tribunal failed to note that after confirming that order passed by the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry with regard to the disputed tax, the respondent/assessee cannot escape from penalty for the suppression of the turnover.
>
> 3. Whether the learned Presiding Officer failed to consider that the penalty amount was imposed upon the respondent/assessee herein as punishment for his act of suppression of turnover and to discourage the dishonest act of tax evasion. Whileso, reducing the penalty amount will result in encouragement of tax evasion and the tax payers will indulge in similar act of evasion on the pretext that he can be able to avoid penalty burden."

4. The respondents/assessees are all registered dealers on the file of the petitioner-Department initially under the provisions of the Pondicherry General Sales Tax Act, 1967 ('PGST Act' for brevity) and subsequently under the provisions of the PVAT Act.

5. It may not be necessary for this Court to elaborately set down the factual matrix leading to the assessment orders dated

30.09.2002, 20.12.2001 and 30.09.2002 respectively.

6. In these tax case revisions, we are only concerned about the correctness of the order passed by the Tribunal in reducing the penalty imposed by the Assessing Officer and confirmed by the First Appellate Authority. The Tribunal elaborately considered the grounds raised by the assessees before it, questioning the merits of the assessments and rejected the case of the assessees and confirmed the orders passed by the Assessing Officer as well as the First Appellate Authority.

7. With regard to the imposition of penalty, the Tribunal accepts the legal position that in terms of the provisions of Section 13(3) of the PGST Act, it provides for levy of penalty one and half times of the disputed tax, however, chose to interfere with the quantum of penalty and reduced the penalty by observing that it has taken into consideration the submissions put forth by the assessees before it. However, the Tribunal has not given any specific reasons as to why it was inclined to reduce the quantum of penalty, after having come to the conclusion that the assessees have deliberately suppressed the turnover.

8. Exercise of discretion should be supported by valid reasons and if it is no so supported, then exercise of discretion has to be held to be arbitrary.

9. We find that there is no reason assigned by the Tribunal to reduce the penalty. Therefore, we are inclined to interfere with the order passed by the Tribunal.

10. As it has been brought to the notice of this Court by Ms.V.Usha, learned Additional Government Pleader that in respect of one of the assessees before this Court, namely the assessee in T.C.(R).No.73 of 2019, identical issue came up for consideration in a batch of cases in T.C.(R).Nos.29 to 31, 66 to 69 and 99 to 103 of 2019, etc, and though there were other questions, which were framed for consideration, two of the questions were whether in the facts and circumstances of the said case, the Appellate Tribunal was justified in confirming the levy of penalty under Section 24(3) of the PVAT Act, which is in pari materia with Section 13(3) of the PGST Act. The Hon'ble Division Bench dismissed the appeal filed by the assessee by assigning the following reasons:

> "40.The final aspect would be whether penalty levied by the Assessing Officer requires interference or not. The arguments

of the learned counsel for the petitioner is that mens rea is required and in this regard, placed strong reliance in Tvl. Nu-Tread Tyres (supra), which was a case arising under the provisions of the Central Sales Tax Act, 1956.

41.The Hon'ble Full Bench pointed out that the expression “falsely represents” clearly shows that the element of mens rea is necessary component of the offence and in the absence of mens rea, resort to penal provision would not be proper, unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provisions or wilful disregard. The Hon'ble Full Bench had referred to the decision in the case of Vijaya Electricals vs. State of Tamil Nadu, (1991) 82 STC 268, wherein, the dealer, who knew what was contained in the certificate of registration uses the C Form declarations in respect of goods not mentioned in the certificate and the representation made by the dealer was false. The Court noted this decision and held that it is sufficient to indicate that mens rea has application in tax default cases.

42.Admittedly, in the instant case also, the issue revolves around a Form C declaration and if according to the dealer, he had submitted the blank forms, it would amount to an offence. However, the first appellate authority found that there was no blank forms but, signed by them in all pages including annexure along with invoice bills. If that is so, then the details furnished therein should obviously tally with the return filed by the dealer. If there is discrepancy in that, the burden is on the dealer to disprove the same, more particularly, when the allegation is there is large scale suppression of taxable turnover. Thus, mens rea is writ large on the face of the record. There is no further proof required to establish the blameworthy conduct of the dealer. Though we may not be fully justified in examining the past conduct of the dealer, especially when they had succeeded in the earlier writ petitions in W.P.Nos.4385 to 4392 of 2009, which also arose out of the same type of transaction in the previous years and the Department having not filed an appeal yet, this would be a clear indicator as regards the modus operandi of the dealer. Thus, we safely conclude that there was sufficient mens rea on the part of the dealer and this can be gathered from their conduct and the Assessing Officer was justified in imposing penalty, as confirmed by the first appellate authority.

43.However, we are not convinced with the manner in which the Tribunal had interfered with the order passed by the first appellate authority by reducing the penalty merely, on the ground that the dealer accepted and paid the tax. There can be no concession on this ground and it is a clear case of misplaced sympathy. If the dealer has not paid the correct rate of tax, it is illegal. If the dealer has collected tax and not remitted to the Department is all the more illegal. Therefore, there is no case for exercising any sympathy in such cases more particularly, when the transactions are all financial transactions especially dealing with the petroleum products, which can be handled only by licensed dealers such as the petitioner.

44.Further, the Court can take judicial notice of the fact that the dealership is in an Union Territory, the dealership granted to the petitioner is a Union Territory adjoining other States, where prices of fuel is higher than that of the Union Territories and it is common knowledge that these petrol pumps in Union Territories abutting other States have a huge turnover. Furthermore, we find that though the dealer has been repeatedly stating that cross verification should have been done, cross examination should have been provided, it has not stated as to how they were prejudiced in not allowing the same. In fact, the entire details were furnished along with the pre-assessment notice. It is not the case of the dealer that they wanted some more documents, which the Department did not furnish. No such request was made by the dealer. As pointed out by us earlier, the documents, namely, the C-Form declarations, which were put to the petitioner, were confronted as a document/declaration signed by the dealer.

45.Thus, we find that there is no error in the decision making process as done by the Assessing Officer and such order was rightly affirmed by the first appellate authority as well as by the Tribunal. However, we do not subscribe to the order passed by the Tribunal in interfering with the penalty and reducing the same, considering the hard facts of the cases on hand.

46.In the result, the Tax Case Revisions filed by the petitioners/dealers are dismissed and the questions of law framed in those revisions are answered against the petitioners."

11. The above decision will squarely apply to the case on hand and consequently, we have to necessarily hold that the order passed by the Appellate Tribunal reducing the quantum of penalty is not justified and not sustainable.

12. For the above reasons, the Tax Case Revisions are allowed and the questions framed for consideration are answered in favour of the Revenue and against the respondents/assessees. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Puducherry Value Added Tax Appellate Tribunal.

2. The Appellate Assistant Commissioner (CT),
Commercial Taxes Department,
Puducherry.

3. The Commercial Tax Offier,
Mahe - 673 310.

MG(CO)
CS/17/04/2021