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.Nos. 6814 and 6815 of 2008

M.K. Chidambaram
Rajalakshmi Corporation
Pattukottai Road
Gandarvakottai .. Petitioner in both the Writ Petitions

Versus

1. Addl. Deputy Commercial Tax Officer
Pudukottai – II

2. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench)
Rep by its Secretary
City Civil Court Building
High Court Complex
Chennai – 600 104 .. Respondent in both the Writ Petitions

W.P. No. 6814 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in T.A. No. 146 of 2003 dated 3.9.2007 on the file of the Second Respondent in respect of the assessment year 1990-1991, quashing the same in so far as it relates to the confirmation of equal addition on a turnover of Rs.44,22,708/- and levy of tax, surcharge, Additional Sales Tax and penalty.

W.P. No. 6815 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in T.A. No. 147 of 2003 dated 3.9.2007 on the file of the Second Respondent in respect of the assessment year 1991-92, quashing the same in so far as it relates to the confirmation of equal addition on a turnover of Rs.41,20,208/- and levy of tax, surcharge, additional sales tax and penalty.

For Petitioner : Mr. K. Mani
in both the Writ Petitions

For Respondents : Mr. M. Venkateswaran
Special Government Pleader (Taxes)

COMMON ORDER
(Order of the Court was made by R. Mahadevan, J.)

The petitioner has filed these writ petitions challenging the orders of the second respondent in T.A. Nos. 146 and 147 of 2003 dated 3.9.2007 in respect of the respective assessment years 1990-91 and 1991-92 and quash the same, insofar as they relate to confirmation of equal addition on turnover of Rs.44,22,708/- and Rs.41,20,208/- respectively as also the levy of tax, surcharge, Additional Sales Tax and penalty.

2.The petitioner is carrying on the business of cashew nuts and an assessee on the file of the first respondent. While so, an inspection was conducted by the Enforcement Wing Officials in the business premises of the petitioner on 25.05.1993. Based on the report and D7 records, the first respondent revised the assessments for the years in question and passed orders, determining the total and taxable turnover, besides levying penalty at 150% of the tax due on the actual suppression. Challenging the same, the petitioner preferred appeals before the Appellate Assistant Commissioner (CT), Thanjavur, who remanded the matter to the assessing officer for fresh consideration and accordingly, disposed of the appeals filed by the assessee. On remand, the assessing officer confirmed the same assessment orders, against which, the petitioner / assessee preferred appeals for two more times and the Appellate Authority also remanded the same for two more times in AP Nos.599/96 and 263/99 for the year 1990-91 and AP Nos.6/98 and 264/99 for the year 1991-92. Thereafter, the assessing officer issued pre-revision notices for the assessment years in question, to which the appellant did not file any document to prove their stand. In the absence of any concrete evidence, the assessing officer again confirmed the turnovers and penalties already determined. Challenging the said assessment orders, the petitioner / assessee preferred appeals, which were dismissed by the Appellate Authority, thereby confirming the reassessment orders passed by the assessing officer. Aggrieved over the same, the petitioner filed appeals before the second respondent / Tribunal. After hearing both sides, the Tribunal concluded that the suppression as per D7 records, was correct, but three times further addition was harsh and accordingly, disposed of the appeals, by modifying the three times further addition to equal time addition, besides confirming the levy of penalty under section 12(3). Challenging the said order of the Tribunal, the petitioner/ assessee is before this court with the present writ petitions.

3.The learned counsel for the petitioner, after making some submissions, restricted the relief sought in these writ petitions, only in respect of levy of penalty. According to him, the Tribunal did not take into consideration the fact that Section 3-B was inserted by Act 31 of 1996 for levy of penalty for payment of additional sales tax only with effect from 16.04.1997. Whereas, in the present case, the inspection was done on 25.05.1993, which formed the basis for passing the re-assessment orders relating to the years 1990-91 and 1991-92 and the alleged sales suppression were taken place prior to 16.04.1997. In such circumstances, the levy of penalty for payment of additional sales tax will not arise. However, the Tribunal erred in confirming the orders of the Appellate Authority with regard to levy of penalty in toto.

4.The learned Special Government Pleader (Taxes) appearing for the respondents fairly conceded the submissions made on the side of the petitioner that the levy of penalty for payment of additional sales tax was introduced by inserting section 3B by the Act 31/1996 only with effect from 16.04.1997 and hence, the petitioner is not liable to pay penalty for the additional sales tax dues in respect of the transactions that took place prior to 16.04.1997.

5.Heard both sides and perused the materials placed before this court.

6.It is not in dispute that the assessments made relate to the years 1990-91 and 1991-92 and the penal provision of section 3B was introduced for collection of the additional sales tax with effect from 16.04.1997 only. Therefore, the penalty is leviable for the suppression of additional sales tax and also for balance of additional sales tax, if any, only with effect from 16.04.1997. On the other hand, in the present case, the inspection was conducted in the business premises of the petitioner on 25.05.1993, based on which, reassessment orders were passed, wherein the assessing officer, while determining the taxable turnovers, levied penalty for the collection of additional sales tax for the suppression of sales that had taken place during the assessment years in question. When the penal provision for additional sales tax was not in existence during the period in question, the element of levying penalty for the additional sales tax dues, will not arise for consideration. Therefore, this court is inclined to modify the order of the Tribunal only with respect to levy of penalty for collection of additional sales tax imposed on the sales suppression that took place during the assessment years in question and is accordingly, modified. In all other respects, the order of the Tribunal shall stand confirmed. The matter is remanded back to the assessing officer only for quantifying the penalty leviable for the actual suppression during the assessment years.

7.Accordingly, both the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dhk

To

1. Addl. Deputy Commercial Tax Officer
   Pudukottai – II

2. The Tamil Nadu Sales Tax Appellate
   Tribunal (Main Bench)
   Rep by its Secretary
   City Civil Court Building
   High Court Complex
   Chennai – 600 104

WP Nos. 6814 & 6815 of 2008

MT(CO)
GN(17/02/2022)