IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM

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

Writ Petition Nos. 34004 & 34143 of 2005

M/s. Swamy Steel Corporation
No.35, Mill Road
Coimbatore -1 .. Petitioner in both W.Ps

Versus

1. The Tamil Nadu Sales Tax Appellate Tribunal
Additional Bench represented by its
Secretary, Commercial Taxes Building
Dr. Balasundaram Road
Coimbatore.

2. The Additional Appellate Assistant
Commissioner (CT)
Commercial Taxes Building
Dr. Balasundaram Road
Coimbatore.

3. The Deputy Commercial Tax Officer
Oppanakkara Street Asst. Circle
Coimbatore .. Respondents in both WPs

W.P. No. 34004 of 2005: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in Coimbatore Tribunal State Appeal No.356/2002 and quash the impugned order dated 29.11.2004.

W.P. No. 34143 of 2005: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in Coimbatore Tribunal State Appeal No.357/2002 and quash the impugned order dated 29.11.2004.

For Appellant : Mr. P. Rajkumar
in both the Writ Petitions

For Respondents : Mr. V. Prashanth Kiran
Government Advocate (Tax)
in both the Writ Petitions

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

The petitioner/assessee in both the writ petitions is one and the same and the issues involved herein are inter-connected and hence, they are heard together and disposed of by this common Order.

2. These writ petitions have been filed by the petitioner, calling in question the correctness of the orders dated 29.11.2004 passed by the first respondent/Tamil Nadu Sales Tax Appellate Tribunal in the respective Coimbatore Tribunal State Appeal Nos. 356 & 357 of 2002.

3. The Petitioner is a dealer in G.I. Wire, M.S. Wire, barbed wire and chain link and an assessee on the file of the third respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959. They filed their returns disclosing the total and taxable turnover for the assessment years 1995-96 and 1996-97. After scrutiny of the same, the Assessing Officer pointed out certain defects in the maintenance of accounts and on 30.08.1996, the business place of the petitioner was inspected by the Enforcement Wing Officials. During the course of search, certain incriminating materials were recovered, which revealed sales suppression. Based on the same, the assessing officer / third respondent determined the taxable turnover at Rs.59,20,125/- and Rs.1,55,61,830/- for the respective assessment years in question and accordingly, passed the assessment orders on 02.03.1999, besides levying penalty under section 12(3)(b).

4. Aggrieved against the assessment orders passed by the assessing officer, the petitioner / assessee filed appeals in A.P. Nos. 1293 & 1294 of 1999 respectively before the second respondent and the said appeals were modified by orders dated 25.10.1999. Challenging the same, the petitioner as well as the State preferred further appeals before the first respondent / Tribunal. It was contended before the Tribunal on the side of the petitioner that the mistakes pointed out by the assessing officer were due to arithmetical calculations and the same was in no way connected with the actual sales and there was no element of wilful non-disclosure of the turnover and hence, penalty levied was improper. The said appeals were partly allowed by modifying the orders passed by the Appellate Authority, by orders dated 29.11.2004, which are impugned in these writ petitions.

5. The main contention of the learned counsel for the petitioner is that the first respondent / Tribunal, without providing reasonable opportunity to the petitioner to explain

their stand, estimated the taxable turnover and passed the orders impugned herein, which are arbitrary, illegal and contrary to law. It is also submitted that the petitioner accounted the entire purchases effected from other states and paid taxes and hence, there was no suppression, as alleged by the respondent authorities.

6. Per contra, the learned Government Advocate (Taxes) appearing for the respondents made his submissions supporting the orders passed by the third respondent / Tribunal.

7. Heard Mr. P. Rajkumar, learned counsel for the petitioner and Mr.V. Prashanth Kiran, learned Government Advocate (Taxes) and perused the materials placed before this court.

8.1 On a perusal of the orders, which are impugned in both the writ petitions, we find that the Tribunal had extensively dealt with all the contentions raised by the petitioner / assessee and also considered the documentary evidence made available before it and ultimately, modified the appeals filed by the petitioner.

8.2 The Tribunal in para No. 8 of the order impugned in WP.No.34143 of 2008, relating to the assessment year 1995-96, had made detailed analysis as regards the sales suppression re-estimated by the First Appellate Authority and observed that the same was proper. However, it was found by the Tribunal that with respect to trading account, there was mis-classification of taxable items under exempted items and accordingly, the actual suppression was refixed by modifying the sales suppression estimated for purchase suppression identified by adopting 20% gross profit, instead of 15% adopted by the Authorities below. As regards the equal time addition made to actual suppression, the Tribunal reduced the same to 50%, after having found that the suppression of local sales relating to taxable items, as per the records, was very few and limited. With respect to penalty levied at 150% under section 12(3)(b), the Tribunal was of the view that since the actual suppression was refixed, the penalty calculated by the Appellate Authority was also refixed.

8.3 The Tribunal in para 8 of the order impugned in WP.No.34004 of 2005, relating to the assessment year 1996-97, had given elaborate reasons for concurring with the findings of the First Appellate Authority, except with a slight variation, as regards the actual suppression. In respect of first sales estimated, the Tribunal had confirmed the estimation made by the Appellate Assistant Commissioner. Regarding the issue relating to estimation made at equal time to actual suppression for probable omission, the Tribunal had reduced it to 50%, considering the facts and circumstances involved and accordingly, refixed the taxable turnover. With respect to additional sales tax, the Tribunal held that the same was inserted in the provisions by Act 31/96 with effect from 16.04.1997 and the penalty was leviable for suppression of additional sales tax and also for the balance of additional sales tax only from 16.04.1997. Since the assessment was relating to the year 1996-97, the penalty at 150% was deleted and the same was remanded back to the assessing officer for quantifying the penalty under section 12(3)(b) correctly for the actual suppression refixed.

8.4 Thus, we are of the opinion that the findings so rendered by the Tribunal are based on the materials available placed before the same and upon hearing the learned counsel appearing for both the parties and hence, the same need not be interfered.

9. In fine, the writ petitions deserve to be dismissed as devoid of merits and are accordingly, dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

1.The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal
Additional Bench
Commercial Taxes Building
Dr. Balasundaram Road
Coimbatore.

2. The Additional Appellate Assistant
Commissioner (CT)
Commercial Taxes Building
Dr. Balasundaram Road
Coimbatore.

3. The Deputy Commercial Tax Officer
Oppanakkara Street Asst. Circle
Coimbatore.

+1cc to the Special Government Pleader(Taxes), S.R.No.64175

WP Nos. 34004 & 34143/2005

GPL(CO)
SB(10/02/2022)