IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.03.2021
CORAM

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

Orders Reserved On 19.03.2021	Orders Pronounced On 25.03.2021

W.P.No.34810 of 2005
and
W.P.M.P.No.37688 of 2005

Tvl.Mukesh Industries,
Rep., by its Proprietor,
B.Mukesh Kumar,
1, Hanumantharayan Street,
Chennai-600 003. .. Petitioner

-vs-

1.The Tamilnadu Sales Tax Appellate Tribunal,
Rep., by its Secretary,
2nd Floor, City Civil Court Buildings,
Chennai-600 104.

2.The Appellate Assistant Commissioner (CT) I,
6th Floor, Kuralagam Annexe,
Chennai-600 108.

3.The Commercial Tax Officer,
Moore Market (North) Assessment Circle,
Wavoo Complex, 191, N.S.C.Bose Road,
Chennai-600 001. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 1st respondent in S.T.A.No.1743 of 2000 dated 12.02.2004 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.R.Swarnavel,
Government Advocate

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ORDER

T.S.Sivagnanam, J.

The petitioner is a registered dealer on the file of the third respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") and the challenge in this writ petition is to an order passed by the Tamil Nadu Sales Tax Appellate Tribunal (for brevity "the Tribunal") allowing the appeal filed by the State challenging the order reversing the order of the first appellate authority, who set aside the assessment order.

2.Mr.K.Soundararajan, learned counsel appearing for the petitioner would submit that the place of business of the petitioner was inspected by the Enforcement Wing Officials on 16.03.1998 and they recovered certain records based on which, a "D7" proposal was drawn. Based on the report of the Enforcement Wing, the Assessing Officer called upon the petitioner to produce the accounts by issuing summons. Based on the statement recorded by the Enforcement Wing, the matter was referred to the Assessing Officer, who took up the assessment proceedings.

3.On a reading of the assessment order dated 15.03.1999, it is seen that the petitioner did not cooperate in the proceedings. The Assessing Officer, after elaborately considering the entire issue and taking note of the fact that the assessee did not produce the accounts in spite of being called upon to do so, confirmed the assessment on best of judgment basis, levying tax and penalty.

4.Aggrieved by the same, the petitioner had preferred appeal stating that the petitioner is only a job worker and there is no sales suppression and the conclusion arrived at by the Assessing Officer was erroneous. By order dated 17.07.2000, the appeal filed by the petitioner was allowed by the first appellate authority. The State preferred appeal to the Tribunal, which has been allowed by the impugned order.

5.It is contended by the learned counsel for the petitioner that the assessment, made based upon the cooly register maintained by the petitioner, is wholly erroneous and the Assessing Authority and the Tribunal failed to take note that the petitioner was only doing labour work on the raw materials supplied by their customers. Further, even during the inspection, the Officials have not found any finished goods and raw materials and the huge estimation done by the Assessing Officer is erroneous. Further, it is contended that for manufacturing such huge quantity, the petitioner should have purchased huge quantity of raw materials, which was not established by the Department. Further, no enquiry was conducted and the assessment is solely based upon estimation, which is erroneous.

6.Mr.Swarnavel, learned Government Advocate appearing for the respondents submitted that the Tribunal has elaborately dealt with the factual findings and has clearly brought out the modus operandi of the petitioner and the facts clearly show that there was sales suppression done by the petitioner and the Assessing Officer was correct in estimating the turnover and assessing the petitioner and this order was erroneously reversed by the first appellate authority and the Tribunal rightly interfered with the order of the first appellate authority and restored the assessment. Therefore, the learned Government Advocate submitted that the impugned order passed by the Tribunal may be affirmed.

7.We have heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.R.Swarnavel, learned Government Advocate appearing for the respondents and perused the materials placed on record.

8.The first issued to be considered is whether the estimation done by the Assessing Officer based upon records, which were recovered during the inspection, was just and proper.

9.As prefaced earlier, the assessee did not cooperate in the assessment proceedings, but when they filed the first appeal, they contended that the assessment, based on estimation without any material, is erroneous.

10.To consider the correctness of this submission, we need to take note of the issue as to on whom the burden of proof lies. The Department had made an allegation that there has been a sales suppression. If that is so, the initial burden lies on the Department to prima facie establish the case of suppression. If that is done, then it is for the dealer to put forth his submissions and rebut the proposal made by the Department to enable him to wriggle out of the proposed assessment. Admittedly, certain records were recovered at the time of inspection and the Tribunal has considered those records and noted that as per Slip No.15, 125kgs of plastic granules was purchased for Rs.5,000/- from Maruti Plastics, Chennai. Though the purchase bill is in the name of some other company, the Assessing Officer estimated sales suppression at Rs.6,750/- and assessed the purchase value of Rs.5,000/- under Section 7A of the TNGST Act, taking note of the statement given by the dealer that they used to effect purchases and used material for manufacture of electrical goods. At the time of inspection, 150kgs of plastic granules was unloaded in the factory and the name of the consignee was Beekay Plastics, Chennai and the Assessing Authority estimated the sale value of electrical goods at Rs.9,720/- at 16% and assessed the purchase value at Rs.7,200/- at 4% under Section 7A of the Act.

11.Before the Tribunal, the petitioner contended that the goods on both the occasions were sent for manufacture of finished goods for labour work and the statement, which was obtained by coercion, cannot be relied upon. The Tribunal found that the petitioner had paid wages during the relevant year to the tune of Rs.4,12,515/- as per book marked "B" and based upon the payment of wages, the Assessing Officer estimated the value of the electrical goods manufactured and sold outside the accounts at Rs.22,27,551/- and the purchase of raw materials outside the accounts at Rs.16,50,060/- under Section 7A of the TNGST Act. The Tribunal noted that there was no proof by way of delivery note for the supply of raw materials for manufacture of finished goods for labour charges. Further, it noted that there was no proof for the supply of finished goods to the customers with the labour bills raised by the petitioner in the name of the customers whereas, there was receipt of raw materials by the petitioner in the name of some other party. Further, the Tribunal noted that the petitioner had paid wages to the tune of Rs.4,12,515/- and the labour charges were paid on per piece basis on several occasions. The extract of the bank account showed that a sum of Rs.9,07,529/- was credited for the year 1997-98 and though the petitioner contended that the amount related to labour charges, no proof was produced by the petitioner and in the absence of evidence to prove that the receipt of money was for labour charges, the Tribunal concluded that the Assessing Authority was justified in drawing an inference of sales suppression.

12.So far as the levy of penalty under Section 12(3)(b) of the TNGST Act is concerned, the Tribunal held that the turnover has been estimated based on the "D7" records recovered from the petitioner and also copy of the bank extracts of the petitioner and the estimation of turnover based on "D7" records recovered from the petitioner, will not come under the category of Explanations (i) and (ii) of Section 12(3) of the TNGST Act so as to exclude the turnover from the levy of penalty. Accordingly, levy of penalty was sustained and the appeal filed by the State was allowed.

13.So far as the assessment is concerned, we find that the Tribunal has examined the facts in its entirety and concluded against the petitioner. We find that the approach of the Tribunal is not perverse for us to interfere by exercising jurisdiction under Article 226 of the Constitution of India. Therefore, to the said extent, the order passed by the Tribunal, confirming the assessment made on the petitioner, has to be confirmed.

14.With regard to the levy of penalty, admittedly, the turnover has been estimated based upon the bank statement, the entries in the books, which were recovered during inspection and there is no allegation of concealment. Further, we find that there is no specific allegation made against the petitioner as to on what basis, the Assessing Officer was of the view that penalty has to be imposed on that petitioner, that too, at 150%. Thus, in the absence of proper proposal, the levy of penalty cannot be sustained.

15.For the above reasons, the writ petition is partly allowed, the impugned order passed by the Tribunal is affirmed, insofar as it restores the assessment order dated 15.03.1999. However, the order passed by the Tribunal affirming the penalty levied on the petitioner is set aside and the penalty imposed stands vacated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

abr
To
1.The Secretary,
The Tamilnadu Sales Tax Appellate Tribunal,
2nd Floor, City Civil Court Buildings,
Chennai-600 104.

2.The Appellate Assistant Commissioner (CT) I,
6th Floor, Kuralagam Annexe,
Chennai-600 108.

3.The Commercial Tax Officer,
Moore Market (North) Assessment Circle,
Wavoo Complex, 191, N.S.C.Bose Road,
Chennai-600 001.

+1CC TO MR.K.SOUNDARARAJAN, ADVOCATE, SR.NO. 19425
+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 20027

W.P.No.34810 of 2005

JPL(CO)
KKN 29.04.2021