



WEB COPY

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 No. 36139 of 2005
and
WP.MP.No.38992 of 2005

Tvl. Benz Automobiles (P) Limited
Rep by the Managing Director
C/o Benz Towers, C.C. Road,
Salem - 636 001

.. Petitioner

Versus

1. The State of Tamil Nadu
Rep. by the Secretary
Dept. of Commercial Taxes and
Religious Endowments
Fort St. George
Chennai - 600 009
2. The Secretary
Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench)
Coimbatore - 18
3. The Appellate Assistant Commissioner (CT)
Salem
4. The Commercial Tax Officer
Salem Town (South)
Salem.

.. 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 in CTA 138/03 dated 08.08.2005 and quash the same as illegal.

For Petitioner : Mr. Rajesh

For Respondents : Mr.N.R.R. Arun Natarajan
Special Government Pleader (Taxes)

ORDER

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



2. The petitioner is a dealer in four wheelers automobiles parts, tractor parts and tractor engine parts and an assessee under the fourth respondent herein. For the assessment year 1996-1997, the assessee reported a total turnover of Rs.9,26,01,139/- and taxable at Rs.4,61,25,909/-. However, the Assessment Officer/fourth respondent, based on an inspection conducted on 11.09.1996, passed an order dated 31.01.2000 determining the total turnover at Rs.11,65,69,152/- and taxable at Rs.7,00,93,915/-. According to the petitioner / assessee, the Assessing Officer passed the best judgment on the basis of the six slips recovered and 2 note books marked 'A' and 'B' with other minor discrepancies in stock, etc. Further, the Assessing Officer verified and concluded that there was no suppression in most of the entries, however, refused to accept that the books marked 'A' and 'B' with reference to market survey conducted by the employees of the assessee from the mechanics at various places as to the value of consumption of various types of automobile parts. The book marked 'A' contains estimation of probable sales in the opinion of the mechanics in the particular area and the book marked 'B' is with reference to actual purchase of spare parts by particular mechanics and the same cannot be the basis for determining the total taxable turnover of the assessee. Thus, the Assessing Officer also imposed penalty for alleged suppression of sales, besides levying additional sales tax at 2.25%.

3. Aggrieved by the order of assessment dated 31.01.2000, the petitioner filed A.P. No. 96 of 2000 before the third respondent. The third respondent, by the order dated 27.12.2002 modified the order of the Assessing Officer with respect to certain findings and remanded the matter back to the Assessing Authority for fresh consideration. However, the Appellate Authority confirmed the imposition of penalty. Assailing the order passed by the Appellate Authority, the petitioner / assessee filed C.T.A. No. 138 of 2003 before the Tribunal. The Tribunal, by order dated 08.08.2005, partly allowed the appeal by modifying the order of the Appellate Authority. As against the order passed by the Tribunal, the present writ petition came to be filed at the instance of the assessee.

4. Heard Mr. Rajesh, learned counsel for the petitioner and Mr.N.R.R. Arun Natarajan, learned Special Government Pleader (Taxes) appearing for the respondents and also perused the materials available on record.

5. We find that the Tribunal had dealt with each and every contentions raised by the petitioner / assessee before it, in extenso, rendered its findings on facts and thereafter, given relief to the assessee with respect to levy of tax on some items and also upheld the findings of the Appellate Authority on some count. The order passed by the Tribunal can profitably be extracted hereunder:-

"6.On the other hand, in respect of slip No.2, the front page indicates the sale of spare



WEB COPY

parts for Rs.2,930/- on 06.07.1996 to J.R.B.B. and though the sale had been effected to transport company, the appellants have raised the sale bills on Thiru. Kalidas, Salem, who is a mechanic. Similarly, there is another sale for Rs.6,341/- to SMES on 28.08.1996. In this case also, the sale bill was raised in the name of mechanic Thiru. Kalidas. It is therefore proved that the appellant-company even though sold goods to transport companies and bus owners, had actually raised the sale bills in the name of mechanics only. Even according to the appellants, the entries in the Note Books marked A and B are the details obtained from the mechanics only. In the absence of the name of the spare parts and also the quantity of the spare parts and as the entries against each mechanic contains only the value, having regard to the entries in the slips, there is every justification to conclude that the same related to sales made to the mechanics only. However, we find that all the entries cannot be treated as sales taxable at the hands of the appellants. The appellant-company besides receiving goods by way of stock transfer from their Head Office, had also been effecting purchase from other registered dealers within the State and effecting sales at second and subsequent points. Having regard to the above facts and also the ratio of the decision reported in 55 STC 210, we are inclined to adopt the ratio of 50 : 50 as between the first and second sales. We therefore, confirm the assessment on a turnover of Rs.2,86,909/- and on a turnover of Rs.52,89,357/- taxable at 11% for the period from 17.07.1996 to 31.03.1997. The assessment on the balance turnover is set aside.

7. As regards the difference in stock, it is the contention of the learned Authorised Representative that the same was meagre, when compared to huge stock held at the time of inspection. But the explanation of the learned Authorised Representative could not be accepted. The appellants have not maintained day-to-day stock account even though they have received the goods from other State. Even according to the learned Authorised representative, the details of actual stock taken at the time of inspection ran to 10 pages. In the absence of stock account, Assessing Authority is forced to make verification in respect of selected items only. Thus, he had made verification with reference to 10 items of goods and had noticed discrepancy valued at Rs.53,485/-. Similarly because the verification was limited to 10 items only, the appellant cannot claim that the stock difference arrived at was meagre and liable to be set aside. The position may be different if verification is made on all items of stock. The



WEB COPY

orders of the Government referred to by the learned Authorised Representative would also be applicable to a case, where the entire stock was verified and the difference noticed fell below 2%. We therefore confirm the assessment made on the turnover of Rs.53,485/-.

8. As regards the assessment on the turnover of Rs.69,954/- representing the general addition for defects, we find that the appellant company had not maintained stock account and at the time of inspection on 11.09.1996 the cash book was found written upto 07.09.1996 only. These defects, coupled with discrepancy in stock, clearly establish that the accounts maintained by the appellant are not correct and complete. The addition sustained by the first appellate authority is therefore confirmed.

9. As regards further addition sustained by the appellate authority, we find that the entries in the Note Books marked 'A' & 'B' almost cover the period upto the time of inspection and further addition is therefore not necessary. The assessment on the turnover of Rs.4,30,363/- at 8% and on the turnover of Rs.79,34,036/- are set aside.

10. As regards the addition made with reference to the discrepancy in stock, it is seen that the discrepancy in stock was deficit only. The appellant company, had also been effecting purchase from local registered dealers. In such circumstance, the further addition with reference to the stock discrepancy is not warranted. The assessment on the turnover of Rs.40,114/- at 11% is set aside.

11. As regards the further addition with reference to the slips, we confirm the same as the appellate are found to be effecting sales without bills and selective in raising sale bills. The assessment on the turnover of Rs.49,790/- at 11% is confirmed.

12. The next item of dispute is the rate of tax on the sale of Tractor parts. The Assessing Authority had assessed the same at 11% holding that the tractor parts are suitable for engine also. But the stand taken by the Assessing Authority is not correct. The sale of tractor and tractor parts and accessories are liable to tax at 4% under Entry 79 of Part B of First Schedule to the Act with effect from 17.07.1996 alone will prevail over the general entry. We therefore set aside the assessment on the turnover of Rs.7,81,249/- at 11% and order the same to be assessed at 4%.

13. The next item of dispute in the levy of additional sales tax for the period from 01.04.1996



WEB COPY

to 31.07.1996. This issue has been settled by the decision of the Honourable High Court of Madras in the case of Philips India Limited vs. Assistant Commissioner (Commercial Taxes) Fast Track Assessment Circle-II and others reported in 137 STC 134.....

In this case, the levy of Additional Sales Tax had been made under Section 2 (1) (a) of the TNGST Act before its amendment by Act 31/96 for the period from 01.04.1996 to 31.07.1996 only. Respectfully following the orders of the Honourable High Court of Madras referred to above and also the decision of the Tamil Nadu Taxation Special Tribunal, Chennai in OP No. 410 of 2001 dated 10.07.2001 in the case of Tvl. Sri Murugan Timber Traders, Tenkasi vs. The Commercial Tax Officer, Tenkasi, we hold that the levy had correctly been made and also sustained by the first appellate Authority. The additional sales tax levied is therefore confirmed.

14. The next item of dispute is the penalty levied under Section 22 (2) of the Act. It is seen that the appellants have collected tax at 12% instead of the correct rate of 11% on a turnover of Rs.9,68,855.44. The learned Additional State Representative argued that the excess collection of tax, if not recoverable, would amount to undue enrichment and therefore, the penalty levied under Section 22 (2) of the Act is correct. The Supreme Court of India in the case law reported in 111 STC 467 has held as follows:-

"The doctrine of unjust enrichment is just and salutary doctrine; no person can seek to collect the tax or duty from both ends. In other words, he cannot collect the duty from the purchaser at one end and also collect the same from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant for unjustify enriching a person."

The collection of tax at 12% as against the correct rate of 11% warrants levy of penalty under Section 22 (2) of the Act. The penalty levied is therefore confirmed."

6. Though the petitioner / assessee raised various grounds assailing the order passed by the Tribunal, we are not inclined to go into the same in detail, as it is a purely question of fact. It is well settled that "a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases, where orders are passed by inferior courts or tribunals without jurisdiction or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected



by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is however no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it, is not entitled to act as an appellate court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record, can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued, if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or insufficiency of evidence led on a point and interference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High courts under Article 226 to issue a writ of certiorari, can be legitimately exercised" (Refer: Syed Yakoob v. K.S.Radhakrishnan and others, 1964 AIR 477].

7. In the light of the aforesaid legal proposition, we are of the opinion that the Tribunal had dealt with all the contentions urged on behalf of the petitioner / assessee and independently given its findings based on the materials available before the same. In fact, the Tribunal had given relief in favour of the Assessee in respect of certain findings made by the Assessing Authority, as confirmed by the Appellate Authority. Therefore, the order passed by the Tribunal does not call for any interference and the same has to be confirmed as such.

8. Accordingly, the Writ Petition filed by the petitioner / assessee fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//



To

1. The Secretary
The State of Tamil Nadu
Dept. of Commercial Taxes and
Religious Endowments
Fort St. George, Chennai - 600 009
2. The Secretary
Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench) Coimbatore - 18
3. The Appellate Assistant Commissioner (CT)
Salem
4. The Commercial Tax Officer
Salem Town (South), Salem.

+1cc to Mr.S.Sivanandam, Advocate SR.No.63598

+1cc to Special Government Pleader (Taxes) SR.No.64176

WP No. 36139 of 2005

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