IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.3.2021

CORAM

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

Writ Petition No.5145 of 2005

M/s.V.V.R.Agency, Namakkal ...Petitioner

Vs

1.The Secretary, Tamil Nadu
Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore-18.

2.The Commercial Tax Officer,
Namakkal Town, Namakkal. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in CTA.No.112 of 2001, quash the proceedings dated 20.9.2004 and further direct the second respondent to grant exemption on the resale of the kerosene oil.

For Petitioner : Mr.C.Aravind for
Mr.V.Sundareswaran

For Respondent-2 : Mr.R.Swarnavel, GA

Order of the Court was made by T.S.SIVAGNANAM,J)

We have elaborately heard Mr.C.Aravind, learned counsel appearing on behalf of Mr.V.Sundareswaran, learned counsel on record for the petitioner and Mr.R.Swarnavel, learned Government Advocate appearing for the second respondent.

2. This writ petition has been filed by the dealer registered on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The challenge in this writ petition is to an order passed by the first respondent dismissing the appeal filed by the petitioner and confirming the order dated 21.11.2000 passed by the Appellate Assistant Commissioner (CT), Salem, who confirmed the

revised order of assessment dated 31.3.2000 for the year 1998-99.

3. The allegation against the appellant was that they had transported kerosene from Mangalore to Namakkal with bogus records, prepared false documents and corrected certain entries in the triplicate. Two show cause notices were issued to the petitioner both dated 16.2.1999. Parallelly, the Assessing Officer namely the second respondent issued the notice for revising the assessment on the basis of the proposal given by the Enforcement Wing Officials. The petitioner sent a reply dated 23.4.2000 stating that they were in possession of documents and that the allegation made against them was not sustainable. Certain other factual details were also placed on record. However, the Assessing Officer did not agree with the reply and completed the assessment by order dated 31.3.2000 by confirming the proposal in the revision notice dated 15.3.2000.

4. Aggrieved by the said order dated 15.3.2000, the petitioner filed an appeal before the Tribunal. Simultaneously, the petitioner filed a revision before the Deputy Commissioner of Commercial Taxes, Salem Division Salem by filing R.P.No.22/99 challenging the order of the Deputy Commercial Tax Officer (Enforcement) Dharmapuri in O.R. No.68/98-99 dated 17.2.1999. The Revisional Authority, by order dated 13.9.2002, examined the allegations made against the petitioner and the documents furnished by them and allowed the revision petition, the relevant portions of which read thus :

> "In this case, at the time of check, the goods were supported with delivery challan cum invoice. As per records, the seller and purchaser are registered dealers. The local tax at 4% had also been charged in the invoice by the seller. The show cause notice was issued by the Inspecting Officer suspecting that the goods were moved from Mangalore relied only on the statement given by the driver of the vehicle. But, it was cross verified with the driver when the petitioner appeared before him on 17.2.1999. Since the local tax found charged in the invoice, there is no evasion of tax in this case. When the transportation of goods in question was supported by valid documents, there was no offence and therefore, the levy of compounding fee and collection of advance tax not warranted in this case. The Tamil Nadu Taxation Special Tribunal, Chennai in the case of Tvl.Colour Tex Ltd. Vs. Joint Commissioner (RP) and another reported in 119 STC 105 held that 'as there were proper

documents at the time of check of goods at the check post, there was no case to invoke Section 46(1)(a) to levy compounding fee'. The Deputy Commercial Tax Officer (Enforcement), Dharmapuri is therefore not justified on the levy of compounding fee and collection of advance tax in this case.

In view of the above, the compounding fee levied in this case is set aside.

In the result, the revision petition stands allowed."

5. Thus, the very basis, on which the Deputy Commercial Tax Officer (Enforcement) Dharmapuri passed the order dated 17.2.1999 levying compounding fee and collecting advance tax go after the revision petition in R.P.No.22/99 was allowed. At the relevant point of time, the appeal was pending before the Tribunal wherein the petitioner challenged the revised assessment order dated 31.3.2000 as confirmed by the Appellate Assistant Commissioner (CT), Salem dated 21.11.2000. Though the petitioner was able to show before the Tribunal that the very basis of initiating action against them had been found to be not sustainable by the Deputy Commissioner of Commercial Taxes, Salem in the order dated 13.9.2002 and that the revised assessment was not sustainable, unfortunately, the Tribunal went by the proposal given by the Enforcement Wing Officials and dismissed the appeal.

6. The problem has arisen on account of the fact that there were two proceedings, which were conducted parallelly. One with regard to detention of goods, levy of compounding fee and collection of advance tax against which, the petitioner had a revisional remedy. The proposal given by the Enforcement Wing Officials was also the basis for revising the assessment by issuing the revision notice dated 15.3.2000, which culminated against the petitioner by an order passed by the Appellate Assistant Commissioner dated 21.11.2000. Therefore, the petitioner has to necessarily challenge the said order before the Tribunal.

7. When the appeal was pending, the Revisional Authority, who was the appropriate Authority to examine the correctness of the allegations made by the Deputy Commercial Tax Officer (Enforcement), Dharmapuri, who passed the order dated 17.2.1999, went through the records and found that the petitioner proved to show that the local tax had been charged in the invoice and that there was no evasion of tax. Thus, the allegation of evasion of tax made against the petitioner stood effaced on and after the order was passed by the Deputy Commissioner of Commercial Taxes, Salem Division, Salem in R.P.No. 22/99 dated 13.9.2002. However, the Tribunal erroneously confirmed the proposal and declined to

interfere with the order of assessment.

8. Further, we note that pursuant to the order passed by the Revisional Authority in R.P.No.22/99 dated 13.9.2002, an order of revision has been passed by the Deputy Commercial Tax Officer (Enforcement) Dharmapuri dated 20.3.2003. Thus, the order having become final, the Tribunal could not have proceeded based on the allegation of the Enforcement Wing Officials to sustain the revised assessment order.

9. For all the above reasons, we find that there is absolutely no basis for the Tribunal to come to the conclusion that the assessment should be revised, as the entire pre-revsion itself was founded on the basis of the allegations made by the Enforcement Wing Officials, which allegations were found to be not tenable by the Revisional Authority.

10. In the light of the above, the writ petition is allowed, the impugned order passed by the first respondent Tribunal is set aside and there will be a direction to the appropriate Authority to refund the excess tax collected from the petitioner within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench, Coimbatore-18.

2.The Commercial Tax Officer,
Namakkal Town, Namakkal.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No. 15914
+1cc to the Special Government Pleader(Taxes), S.R.No.16496

W.P.No.5145 of 2005

SSN(CO)
GN(30/03/2021)