IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM

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

Tax Case Revision No.97 of 2018

M/s.Rajshree Glass Ply Wood,
No.1043, Mettupalayam Road,
Coimbatore - 2,
Coimbatore District. ...Petitioner

Vs

The State of Tamil Nadu,
Represented by the
Joint Commissioner (CT),
Coimbatore Division,
Coimbatore. ...Respondent

PRAYER: Revision under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 02.12.2013 passed in CTA.No.3 of 2013.

For Petitioner: Mrs.R.Hemalatha

For Respondent: Ms.G.Dhanamadhri, GA

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

This revision filed by the petitioner/dealer under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 ('TNVAT Act' for brevity) is directed against the order dated 02.12.2013 passed by the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore (for short, the Tribunal) in CTA.No.3 of 2013 for the assessment year 2009-10.

2. The tax case revision was admitted on 22.09.2020 on the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the Tribunal was correct in having endorsed the view of the 1st Appellate Authority that fresh materials have been produced for the first time in the Appellate forum contrary to Section 63(3) of the TNVAT Act, 2006?

2. Whether in the facts and circumstances of the case, the Tribunal was right in having rejected the reasons put forth by the petitioner for the failure to furnish their objections before the Assessing Officer?

3. Whether the Tribunal was legally justified in construing sub-section section (2) &

> *(3) of Section 63 as enforcing a total bar on production?"*

3. We have elaborately heard Mrs.R.Hemalatha, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

4. The place of business of the assessee was inspected by the Enforcement Wing Officials and based on the report, the revision notice dated 16.12.2011 was issued by the Commercial Tax Officer, Mettupalayam Road Circle, Coimbatore by invoking his power under Section 27 of the Act. The assessee/dealer requested time to file their objections, but however, did not keep up the commitment. Consequently, the assessment was revised by order dated 27.01.2021 and tax and penalty was levied.

5. The assessee/dealer preferred appeal before the Appellate Deputy Commissioner (CT), Main, Coimbatore in A.P.No.4 of 2012. Before the First Appellate Authority, the assessee produced credit notes issued towards the price variation. The Appellate Authority refused to accept those documents on the ground that the assessee/dealer did not produce the same

either before the Investigating Officer or before the Assessing Officer, when he issued notice under Section 27 of the Act and therefore, he stated that the credit notes cannot be considered as genuine. This view has been affirmed by the Tribunal in the impugned order. The assessee is before us challenging the correctness of the same and raising the above substantial questions of law.

6. The legal issue as to whether the Appellate Deputy Commissioner can accept documents filed by the assessee is no longer res integra and has been decided in several cases in favour of the assessee, holding that the First Appellate Authority or the Tribunal has requisite power to find out whether any register, record, account book or document produced before it was genuine, so as to find out whether the assessee was entitled to certain concession or benefit.

7. In this regard, it is beneficial to refer to the decisions of the Division Bench of this Court in the cases of ***The Deputy Commissioner (C.T.), Coimbatore Division, Coimbatore-2 Vs. New Ajantha Wines [(1979) 44 STC 327], State of Tamil Nadu Vs. Shah Moolchand***

Kasthurchand and another [(2010) 33 VST 529] and the recent decision of this Court in T.C.R.Nos.11 to 15 of 2020, dated 03.02.2021, which was decided in favour of the assessee/dealer by following the above decisions. The operative portion of the order reads as follows:-

> *"6. Unfortunately, the Tribunal failed to take note of the Explanation to Section 63 of the Act, which states that nothing in this Section shall apply to accounts, which are built up from the initial accounts. Therefore, the Statute did not contemplate a complete embargo on the First Appellate Authority from admitting documents at the appellate stage. This issue was considered in several decisions as to how the matter has to be dealt with by the Appellate Authority and we may refer to the following decisions to support the view that the First Appellate Authority did have jurisdiction to admit documents.*
>
> *7. In this regard, it would be beneficial to refer to the decision of this Court in the case of **DCCT, Coimbatore Division, Coimbatore Vs. New Ajantha Wines [reported in (1979) 44 STC 327]** wherein the Hon'ble Division Bench considered the effect of Section 39B of the Tamil Nadu General Sales Tax Act, 1959 and held that*

the approach of the Department was a wooden approach and that admission of evidence in the sense of substantiation of the contention already urged by the assessee, for which, the necessary documents were already in the court, would not amount to admission of evidence for the first time before the Tribunal. The Court further held that the Appellate Tribunal had requisite power to find out whether any register, record, account book or document produced before it was genuine so as to find out as to whether the assessee was entitled to certain concession or benefit under the Act.

*8. We may also refer to another decision of this Court in the case of **Controller of Estate Duty, Madras Vs. R.Saraswathi Ammal [reported in (1977) 110 ITR 525].** While dealing with the case under Section 58(4) of the Excise Duty Act, 1953, it was held that the Appellate Authority had jurisdiction to entertain the materials produced by the accountable person and that the powers of the Appellate Authority were co-extensive with that of the Original Authority.*

*9. A reference may be made to the decision of the Hon'ble Full Bench of this Court in the case of **State of Tamil Nadu Vs. Arulmurugan &***

Company [reported in (1982) 51 STC 381] *wherein it was held that an Appellate Authority under the taxing enactments sat in appeal only in a manner of speaking, that what it did functionally was only to adjust the assessment of the appellant in accordance with the facts on the record and in accordance with the law laid down by the Legislature, that an appeal was a continuation of the process of assessment and an assessment was but another name for adjustment of the tax liability to accord with the taxable event in the particular tax-payer's case and that there could be no analogy or parallel between a tax appeal and an appeal, say, in civil cases.*

10. In the light of the above decisions, we have to necessarily hold that the finding recorded by the Tribunal that the documents could not be taken into consideration at the appellate stage is unsustainable. On facts, we find that the documents were not admitted by the First Appellate Authority for the first time, but the documents were already available on record. Upon perusal of the said documents, the First Appellate Authority found that the receipts did not relate to any sale. Therefore, the Tribunal did not

go into the factual position to ascertain as to whether the First Appellate Authority admitted fresh documents or were the documents available on record even when the assessment was completed. This aspect has been clearly brought out by the First Appellate Authority in his orders dated 31.12.2014, which aspect has not been examined by the Tribunal. Hence, on the said score also, the petitioner - assessee is bound to succeed.

11. In fine, the finding rendered by the Tribunal on the first issue with regard to Section 63 of the Act is held to be not sustainable and accordingly, the same is set aside. "

8. In the light of the above decision, it has to be necessarily held that the First Appellate Authority as well as the Tribunal can receive documents subject to the genuinity being proved. In the order passed by the First Appellate Authority, dated 13.12.2021, it is stated that the materials produced by the assessee/dealer before the First Appellate Authority cannot be considered as genuine. However, this finding does not stem out of any enquiry or investigation done with regard to the veracity of documents and what the First Appellate Authority states to be not genuine is the conduct of

the assessee/dealer, i.e., the assessee/dealer did not produce the documents either before the Investigating Officer or before the Assessing Officer. In any event, this opinion expressed by the First Appellate Authority does not touch upon the genuineness of the credit notes, which was produced. Therefore, the Assessing Officer would be well justified in considering the genuinity of the documents produced by the assessee/dealer.

9. For the above reasons, the tax case revision is allowed. The substantial questions of law are answered in favour of the assessee and the matter is remanded to the Assessing Officer. The assessee/dealer shall produce all the documents/credit notes in original before the Assessing Officer within two weeks from the date of receipt of a copy of this judgment. Thereafter, the Assessing Officer shall afford an opportunity of personal hearing to the authorized representative of the assessee, examine the genuineness of the documents produced and redo the assessment in accordance with law. No costs.

(T.S.S.,J.) (R.N.M.,J.)
29.03.2021

Index:Yes/No
Internet:Yes/No
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T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

hvk

To

1. The Sales Tax Appellate Tribunal, (Additional Bench),
   Coimbatore.

2. The Joint Commissioner (CT),
   Coimbatore Division,
   Coimbatore.

TC(R).No.97 of 2018

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