BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2021
CORAM:
The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI

T.C.R.No.(MD).Nos.1446, 1451, 1452 & 1455 of 2006

Tvl. Kasilaxmi & Co.,
Cumbum Road,
Theni. ...Petitioner in T.C.Nos.1446 & 1452 of 2006

Tvl.Ravindra Oil Mills,
Cumbum Road,
Theni. ...Petitioner in T.C.No.1451 of 2006

Tvl.Harishankar Agency,
31 to 36, Cumbum Road,
Theni. ...Petitioner in T.C.No.1455 of 2006

Vs.

The State of Tamil Nadu,
Rep by the Commercial Tax Officer - I,
Theni. ....Respondent (in all cases)

COMMON PRAYER: Tax Case Revisions filed under Section 38 of the Tamil Nadu General Sales Tax Act 1959, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench) dated 27.09.2001 passed in Madurai Tribunal Appeal Nos.674 and 676 of 2000 and 69.73 and 74 of 2001.

For Petitioners : Mr.A.Chandrasekaran
(in all cases)

For Respondent : Mr.R.Baskaran,
Standing Counsel for Govt.
(in all cases)

C O M M O N O R D E R

[Order of the Court was delivered by **T.S.SIVAGNANAM,J.**]

These Tax Revision Case have been filed by the petitioners/dealer challenging the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Branch), Madurai.

2. Heard Mr.A.Chandrasekaran, learned Counsel appearing for the petitioners and Mr.R.Baskaran, learned Standing Counsel appearing for the respondent.

3. The Tax Case Revisions were admitted on 27.01.2009 to decide the following substantial question of law.

"Whether the Appellate Tribunal is correct in confirming the levy of penalty after 5 years under Section 12 (5) (iii) of the Act when the very same section prescribes a period of limitation of 5 years?"

4. We have perused the order passed by the Tribunal and we find that the Tribunal has not given any adequate reasons for justifying the levy of penalty. It is relevant to note that the Appellate Tribunal without considering the fact that the levy of penalty was already set aside by the First Appellate Authority and the matter was remanded back to the Assessing Authority for fresh consideration on the point of limitation, held that the penalty under Section 12 (5) (iii) of the Act is leviable. The said method adopted by the Tribunal, cannot have any sanction of law, since the dealer had questioned the order passed by the First Appellate Authority in remanding the matter with regard to the penalty issue. Thus, this Court to concur with the order passed by the First Appellate Authority which should have confirmed the remanded the order. But could not have levied the penalty.

5. Hence we are of view that the order passed by the Tribunal calls for an interference.

6. Accordingly, the tax case revisions are allowed and the question of law is answered in favour of the petitioner/dealer. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

kmm

Note : *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To
The Sales Tax Appellate Tribunal (Additional Bench),
Madurai.

Copy to:
The Commercial Tax Officer-I,
The State of Tamil Nadu, Theni.

+1cc to MR.A.CHANDRASEKARAN, ADVOCATE, SR NO.20534

T.C.R.No.(MD).Nos.1446, 1451, 1452 & 1455 of 2006
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