IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2022
PRONOUNCED ON : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. NO.11040 OF 2007
AND
M.P.NO.2 OF 2007

Tvl.Arumugam Blue Metals,
rep. by its Partner,
Vasoor Village, Polur Taluk,
Thiruvannamalai District. ...Petitioner

Vs.

1. The Sales Tax Appellate Tribunal,
   Rep. by its Secretary,
   II Floor, City Civil Court Buildings,
   High Court Campus, Chennai-600 104.

2. The Appellate Assistant Commissioner (CT),
   C.T. Buildings, Fort Round,
   Vellore.

3. The Deputy Commercial Tax Officer,
   Polur Assessment Circle, Polur,
   Thiruvannamalai District. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 1st respondent in S.T.A. No.1070 of 2000 dated 12.09.2003 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondent 1 : Tribunal

For Respondents 2 & 3 : N.R.R.Arun Natarajan
Special Govt. Pleader (Taxes)

ORDER

MOHAMMED SHAFFIQ, J.

The prayer made in this writ petition is to issue a writ of certiorari to quash the order of the Tamil Nadu Sales Tax Appellate Tribunal dated 12.09.2003 passed in S.T.A.No.1070 of 2000, insofar as it restored the order of assessment dated 20.10.1997, while setting aside the order of the First Appellate Authority dated 22.04.1999.

2.The brief facts of the case would run thus:

The petitioner is engaged in the business of manufacture/production of Jelly. For the assessment year 1996-97, the petitioner had reported a total and taxable turnover of Rs.2,28,300/- in their monthly return in Form A1. During the course of assessment, the accounts of the petitioner were called for and were scrutinised, pursuant to which, it was found that the books of accounts suffers from the following defects:

(i)No production-cum-stock account in form XXX or in any other form was maintained and produced.
(ii)Purchases of Chakkai have not been quantified and not supported by any records.
(iii)No stock account for opening and closing stock inventories were maintained and produced.

Subsequently, there was an inspection at the business place of the petitioner and a case study was conducted by the department to find out the input-output ratio in respect of production of jelly. The result of the case study made on 14.05.1996 revealed the following:

Consumption of Electricity during the case study		: 42 units
Quantum of production	1/2" Jelly	1.35 units
	1/2" Jelly	0.65 units
	1/2" Jelly	0.40 units

Consumption of electricity during the assessment year was 12565 units

In view of the above defects and applying the input-output ratio as found in the case study, the assessing officer made a best judgment assessment, determining the total and taxable turnover of Rs.5,15,060/- and accordingly, levied tax thereon at appropriate rates prevailing during the relevant assessment year, besides levying penalty under Section 12(3)(b) of the TNGST Act, 1959 at 150% of the difference between the tax assessed and tax paid, which was nil.

3.Aggrieved by the order of assessment dated 20.10.1997, the petitioner preferred an appeal before the First Appellate Authority, who modified the order of assessment on the premise that the best judgment assessment made on the basis of the case study during the survey conducted on 14.05.1996 was not justified as the said survey was at the beginning of the year and therefore could not have been applied for the entire year. However, the appellate authority, after having noticed that the assessing officer had found certain defects on verification of accounts, proceeded to add 25% to the turnover disclosed in the books of accounts and thereby, redetermined the turnover at Rs.2,85,375/-. Despite the said addition, the First Appellate Authority levied no tax and deleted the penalty, since the turnover re-fixed was below the threshold limit of Rs.3 lakhs and accordingly, allowed the appeal filed by the assessee, thereby setting aside the order of assessment.

4.Challenging the aforesaid order passed by the First Appellate Authority, the State preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, which, after hearing both sides, was of the view that the best judgment assessment of the assessing officer was in order and the same ought not to have been disturbed by the First Appellate Authority. In support of the same, the Tribunal placed reliance on the decisions of this Court as well as the Karnataka High Court in 1992(2) MTCR 226 and 91 STC 100 respectively. Accordingly, the Tribunal restored the order of the assessing officer holding that the best judgment assessment made on the basis of the electricity consumption vis-a-vis determining the input-output ratio, was relevant and that, the books of accounts of the petitioner suffered from various defects, which was already pointed out in the order of assessment.

5.It is against the order of the tribunal, the petitioner has filed this writ petition on the ground that electricity consumption cannot be the basis for re-fixing the turnover by way of best judgment.

6.On going through the orders of the lower authorities, viz., Assessing officer, First Appellate Authority and Tribunal, we find a consistent view that the books of accounts of the petitioner suffers from defects and not reliable and therefore, warrant a best judgment. While the First Appellate Authority has proceeded to reject the estimation on the basis of electricity consumption, but found that the books of accounts suffer from defects warranting best judgment assessment. The Tribunal has however restored the best judgment assessment made on the basis of the electricity consumption and its bearing on the input-output norms, besides rendering a finding that the books of accounts of the petitioner was not reliable for the various defects as referred to above.

7.There appears to be divergents views insofar as the question as to whether the consumption of electricity can constitute the sole basis for making a best judgment assessment. However, we find that in the present case, the best judgment assessment was not only necessitated by the survey report/case study on electricity consumption vis-a-vis production of jelly, but also the fact that the books of accounts maintained by the petitioner suffered from defects as set out above, which even according to the First Appellate Authority, required the best judgment assessment.

8.We also find that the challenge made to the order of the Tribunal, which is in substance a challenge to the best judgment assessment of the Assessing Officer restored by the Tribunal, may not have any merit if one bears in mind the nature of best judgment assessment as explained by the Hon'ble Supreme Court in CST v. H.M. Esufali, H.M. Abdulali [(1973) 2 SCC 137], the relevant portion of which is profitably extracted below:

> "...In the very nature of things the estimate made may be an over-estimate or an underestimate. But that is no ground for interfering with his "best-judgment". It is true that the basis adopted by the officer should be relevant to the estimate made. The High Court was wrong in assuming that the assessing authority must have material before it to prove the exact turnover suppressed. If that is true, there is no question of "best-judgment" assessment.
>
> .... In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the "best-judgment" assessment no doubt should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his "best-judgment" and not of any one else's. The High Court could not substitute its "best-judgment" for that of the assessing authority.
>
> ....If the basis adopted is held to be a relevant basis even though the courts may think that it is not the most appropriate basis, the estimate made by the assessing authority cannot be disturbed."

The above observation of the Hon'ble Supreme Court would make it clear that best judgment assessment necessarily involves an element of guesswork and is a matter of discretion to be exercised by the Assessing Officer and exercise of such power ought not be interfered with lightly unless and until the Court is of the view that the discretion/power of best judgment is exercised in a arbitrary and capricious manner. Any best Judgment assessment is likely to be an over-estimate or an under-estimate, but that itself does not supply a reason or ground for interfering with the same. Keeping in view the above well-settled principle, we are of the view that the order of the Tribunal which is impugned in this writ petition, does not warrant any interference.

9.Coming to the levy of penalty, we find that the assessing officer had levied penalty on the entire turnover arrived at on the best judgment assessment and the same was restored by the Tribunal, by the order impugned herein. Whereas, Explanation to Section 12(3)(b) of the TNGST Act, 1959 provides for certain deductions, while assessing tax at the time of final assessment, for the purpose of determining the quantum of penalty, as can be seen from the extract of the Explanation to Section 12(3)(b) of the TNGST Act, 1959, which reads as under:

> "12(3)(b).....
>
> Explanation-- For the purpose of levy of penalty under clause(b) above, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed on final assessment:
>
> i) Turnover representing additions to the turnover as per books made by the assessing authority without any reference to any specific concealment of turnover from the accounts;
>
> ii) Any turnover estimated by the Assessing Authority with reference to any specific concealment of any turnover from the accounts:
>
> iii) Any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration but where such declaration could not be furnished at the time of assessment."

Thus, we are of the view that the above Explanation has been completely overlooked by the lower authorities including the Tribunal and hence, the matter has to be remanded to the Assessing Authority to re-work the quantum of penalty alone, taking into account the Explanation to Section 12(3)(b) of the TNGST Act, 1959 with respect to the eligible deductions and after providing reasonable opportunity of being heard to the petitioner. To that extent, the order impugned herein stands set aside and the matter is remanded to the third respondent / Assessing Authority, who shall complete the said exercise within a period of three (3) months from the date of receipt of a copy of this order.

10.Accordingly, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Tamil Nadu Sales Tax Appellate Tribunal,
   II Floor, City Civil Court Buildings,
   High Court Campus, Chennai-600 104.

2. The Appellate Assistant Commissioner (CT).
   C.T. Buildings, Fort Round, Vellore.

3. The Deputy Commercial Tax Officer,
   Polur Assessment Circle, Polur,
   Thiruvannamalai District.

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.7505
+1cc to the Government Pleader, S.R.No.7800

W.P. No.11040 of 2007
and M.P.No.2 of 2007

RLD(CO)
PM/28/02/2022