IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. No. 13992 of 2007

M/s. Bubble Package,
17, Motilal Street,
T. Nagar, Chennai – 600 017. ..Petitioner

Vs.

1. The Tamil Nadu Sales Tax Appellate Tribunal, Main Bench,
rep. by its Secretary,
City Civil Court Building,
Chennai.

2. The Appellate Assistant Commissioner (CT) II,
VI, Kuralagam Annex, Chennai.

3. The Commercial Tax Officer,
T. Nagar (South) Asst. Circle,
Chennai. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the first respondent in STA No. 294/2002 and quash the order dated 03.02.2007.

For Petitioner :: Mr. Samuel Rupesh Rajkumar for
M/s.P. Rajkumar
R. Aravind Raj

For Respondents :: Mr.T.N.C. Kaushik
Addl. Govt. Pleader
for R2 & R3

O R D E R

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

The petitioner has filed this writ petition as against the order dated 03.02.2007 passed by the Sales Tax Appellate Tribunal/1st respondent herein in STA No. 294 of 2002.

2. By the aforesaid order, the 1st respondent/Sales Tax Appellate Tribunal has reversed the order passed by the 2nd respondent/Appellate Assistant Commissioner (CT) II in A.P. No. 243/2001 vide order dated 13.04.2001. The 2nd respondent/Appellate Assistant Commissioner (CT) II had earlier allowed the appeal filed by the petitioner and thereby reversed the penalty imposed by the 3rd respondent/Assessing Officer, namely, the Commercial Tax Officer vide order dated 15.03.2000.

3. The petitioner had earlier suffered an assessment order at the hands of the 3rd respondent herein/Commercial Tax Officer on 15.03.2000. The 3rd respondent concluded that the claim for exemption towards second sale on the turnover and the corresponding purchases for Rs.8,88,260/- claimed to have been made locally from one Tvl. Aarjay Enterprises was nothing but fictitious and bogus and the bills produced by the petitioner were bogus. Therefore, the 3rd respondent concluded that the purchases were to be treated as having been made from unknown sources and therefore, the second sale exemption claimed by the petitioner was to be disallowed. The order of the 3rd respondent also states that the accounts were called for and checked which revealed the total turnover at Rs.29,38,853.00. The difference between the turnover reported and that as per the accounts was not satisfactorily explained. In the months of May, June, and January 99, the reported turnover was more than that shown in the accounts and in some other, lesser than that shown in the accounts.

4. Learned counsel for the petitioner would submit that the order of the Sales Tax Appellate Tribunal is erroneous and is liable to be set aside/quashed in this writ petition as the well-reasoned order of the 2nd respondent/Appellate Assistant Commissioner has been erroneously

reversed. It is further submitted that a mere report of stoppage of business by the dealer should not be taken as the basis to conclude that the particular dealer's bill was a fictitious one.

5. Learned Additional Government Pleader for the Department, on the other hand, would submit that the order of the Tribunal is well-reasoned and requires no interference. It is further submitted that the Tribunal is the ultimate fact finding authority and therefore, there is no case made out for interfering with the order passed by the Appellate Tribunal.

6. We have heard the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the official respondents.

7. Though the learned counsel for the petitioner made a forceful submission that the order passed by the Appellate Tribunal was erroneous and therefore, liable to be interfered with, we are of the view that the order of the Appellate Tribunal is well-reasoned and requires no interference. That apart, a revision under Article 226 of the Constitution of India, is confined to the decision making process and not the decision per se.

Moreover, Tvl. Aarjay Enterprises from whom the alleged purchases were said to have been made locally by the petitioner, had stopped their business as early as in February, 1996. The assessment year pertains to 1998-1999. The burden of proof was on the petitioner under Section 10 of TNGST Act, 1959 to establish that the purchase made was, in fact, genuine and the purchase had indeed suffered tax at the time of sales effected to the petitioner. Therefore, before claiming second sale exemption, the petitioner ought to have discharged the burden of proof as is contemplated under Section 10 of Tamil Nadu General Sales Tax Act, 1959. In this case, the petitioner has not discharged the burden. We also do not find any perversity in the order passed by the Appellate Tribunal. We are, therefore, of the view the impugned order of the 1st respondent Tribunal requires no interference.

8. In the light of the above discussion, we are inclined to dismiss the writ petition. Accordingly, the writ petition stands dismissed. No costs.

(S.V.N.J.) (C.S.N.J.)

nv

20.10.2022

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

nv

To

1. The Appellate Assistant Commissioner
 (CT) II,
 VI, Kuralagam Annex, Chennai.

W.P. No. 13992 of 2007

2. The Commercial Tax Officer,
 T. Nagar (South) Asst. Circle,

 Chennai.

W.P.No.13992 of 2007

S.VAIDYANATHAN,J.
and
C.SARAVANAN,J.

This matter has been listed under the caption 'For Being Mentioned' today at the instance of the learned counsel for the Petitioner.

2. The learned counsel for the Petitioner submits that in the order dated 20.10.2022, there is no discussion regarding the penalty imposed on the Petitioner under Section 12 (3)(b) of the **Tamil Nadu General Sales**

Tax Act, 1959 vide impugned order. It is submitted that though the submissions were made there is no discussion and hence he seeks for a clarification to incorporate a finding on the same.

3. We have considered the submissions of the learned Additional Government Pleader for the second and third respondents. It is noted that the issue is covered in favour of the petitioner as far as imposition of penalty under Section 12 (3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

4. In view of the above, paragraph Nos.7 & 8 in the order dated 20.10.2022 shall be substituted and read as follows:-

> "7. Though the learned counsel for the petitioner made a forceful submission that the order passed by the Appellate Tribunal was erroneous and therefore, liable to be interfered with, we are of the view that the order of the Appellate Tribunal is well-reasoned and requires no interference. That apart, a revision under Article 226 of the Constitution of India, is confined to the decision making process and not the decision per se. Moreover, Tvl. Aarjay Enterprises from whom the alleged purchases were said to have been made locally by the petitioner, had stopped their business as early as in February, 1996. The assessment year pertains to 1998-1999. The burden of proof was on the petitioner under Section 10 of TNGST Act, 1959 to establish that the purchase made was, in fact, genuine and the purchase had indeed suffered

tax at the time of sales effected to the petitioner. Therefore, before claiming second sale exemption, the petitioner ought to have discharged the burden of proof as is contemplated under Section 10 of Tamil Nadu General Sales Tax Act, 1959. In this case, the petitioner has not discharged the burden. We also do not find any perversity in the order passed by the Appellate Tribunal.

8. The Division Bench of this Court in the case of *Appollo Saline Pharmaceuticals (P) Limited Versus Commercial Tax Officer (Fac) and others* reported in *2002 125 STC 505 (Mad),* which has been followed by ***Indira Industries Vs. State of Tamil Nadu*** **reported in** *2014 69 VST 139. In this case, it has been held that* imposition of penalty is not automatic under Section 12 (3)(b) of the Tamil Nadu General Sales Tax Act, 1959. It has been held that in a number of cases penalty under Section 12(3)(b) will not apply where an assessment is based on turnover disclosed by an assessee. The issue is therefore covered in favour of the petitioner as far as imposition of penalty under Section 12 (3)(b) of the Tamil Nadu General Sales Tax Act, 1959. **Hence, the penalty imposed on the Petitioner under Section 12 (3) (b) of the Tamil Nadu General Sales Tax Act, 1959 is liable to be set aside.**

9. We are, therefore, of the view the impugned order of the 1st respondent Tribunal requires no interference barring imposition of penalty. In the light of the above discussion, we are inclined to partly allow the writ petition with the above observation. Accordingly, the writ petition stands partly allowed. No costs.

5. Therefore, paragraph 8 of the order dated 20.10.2022, shall be

re-numbered as paragraph 9. Except for this modification, the order dated 20.10.2022 shall remain unaltered.

6. Registry is directed to issue fresh order copy to the learned counsel for the Petitioner after making the aforesaid corrections.

[S.V.N.,J.] [C.S.N.,J.]
16.11.2022

arr

S.VAIDYANATHAN,J.

And
C.SARAVANAN,J.

arr/kkd

W.P.No.13992 of 2007

16.11.2022