IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.23045 of 2007

M/s. Gangai Steel Industries,
rep. by tis Proprietor-S.Ramasamy,
315, Avinashi Road,
B.R.Puram, Peelamedu,
Coimbatore - 641 004. ... Petitioner

Versus

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

2. The Deputy Commercial tax Officer,
   Peelamedu South Circle,
   Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in its proceedings in Coimbatore Tribunal State Appeal No.55/02 dated 18.12.2006 and quash the same as illegal and contrary to the principles of assessment.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition against the impugned order dated 18.12.2006 passed by the 1st respondent/Appellate Tribunal in CTSA.No.55/02.

2. By the impugned order, the Appellate Tribunal has reversed the decision of the Additional Appellate Assistant Commissioner(CT), Coimbatore, dated 30.03.2001 in A.P.No.1212/2000 filed by the petitioner herein. The petitioner had earlier suffered adverse assessment order dated 31.03.2000 for TNGST 1997-98. The petitioner had declared a total turn over of Rs.10,16,197 and taxable turn over of Rs.10,04,213 in the returns filed under the provisions of the Tamil Nadu General Sales Tax Act, 1959, read with the relevant rules. It appears that the petitioner's premises was inspected on 17.03.1998 and steps were taken, pursuant to which, it was ascertained that there was "sale suppression". Under these circumstances, the

petitioner was issued with a notice to revise the assessment on 31.12.1998. In this writ petition, the petitioner has now confined the issue only in respect of the following two items :

| | Turnover<br>Rs. | Tax Due<br>Rs. | Penalty<br>Rs. |
|---|---|---|---|
| Suppression in D7 Slips- | 7,51,430 | 75,143 | 1,12,716 |
| Section 7(A) - | 3,26,709 | 13,068 | 19,603 |

3. The impugned order is assailed on the ground that the Tribunal ought not to have reversed the well considered order of the Appellate Commissioner dated 30.03.2001 in A.P.No.1212/2000. It is submitted that the petitioner has explained the list as 'quotations' which was accepted by the Appellate Commissioner in the aforesaid order. It is further submitted that though under section 39B(2) of the TNGST Act, the Appellate Deputy Commissioner or the Appellate Assistant Commissioner, as the case may be, shall not for the first time receive in evidence on behalf of any dealer in any appeal, unless for reasons to be recorded in writing, he considers that such account, register, record or document is genuine and that the failure to produce the same before the assessing authority was for reasons beyond the control of the dealer.

4. It is submitted that the petitioner had produced the affidavits of the persons whose names were there in the slips to confirm that there was no sales and they were only mere quotations and therefore, based on the quotations, the department cannot conclude that there was sale suppression or purchase.

5. The impugned order is defended by the learned counsel for the Commercial Tax Department. It is submitted that the impugned order of the Tribunal is well considered and requires no interference. It is further submitted that the burden of proof is on the petitioner to discharge before the original authority namely, the 2nd respondent herein. That apart, it is submitted that the evidence which has been produced before the Appellate Commissioner was long after the search on 17.03.1998 and therefore, on that account also, there is no scope for interfering with the well considered decision of the 1st respondent/ Appellate Tribunal.

6. We have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the Commercial Tax

Department. We have also perused the assessment notice dated 31.12.1998 and the consequential order passed by the 2nd respondent on 31.03.2000 and the order passed by the First Appellate Authority namely, Additional Appellate Assistant Commissioner(CT) and that of the Tribunal which has been impugned in this writ petition.

7. We are of the view that the order passed by the Appellate Tribunal is well considered and requires no interference. This Court, in exercising the power under Article 226 of the Constitution of India, is only concerned with decision making process and not decision *per se.* The fact on record also indicates that the attempt of the petitioner to distance himself from the liability was made only before the Appellate Commissioner by producing few affidavits of persons whose names were in the slip. This is long after the assessment notice was issued on 31.12.1998. Further, Section 38B clearly stipulates that reasons has to be recorded in writing by the Appellate Assistant Commissioner that he has considered such document as genuine and failure to produce the same before the Assessing Authority was beyond the control of the dealer. Thus, the Appellate Assistant Commissioner committed an error in allowing the petitioner's appeal based on affidavits of

so called persons whose name were there in the slips. In our view, the order of the Tribunal does not warrant any interference before us.

8. We are therefore, inclined to dismissed the writ petition. Accordingly, the Writ Petition is dismissed. No costs.

(S.V.N., J.) (C.S.N., J.)
20.10.2022

Internet : Yes
Index : Yes / No
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S.VAIDYANATHAN,J.
AND
C.SARAVANAN,J.

vsi

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