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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No. 146 of 2008

M/s. Sundaram Modern Plastics
rep. by its Partner N. Ramesh
1197, Avinashi Road
Coimbatore - 18

.. Petitioner

Versus

1. The Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench) Coimbatore
   Commercial Taxes Building
   Coimbatore - 18

2. The Deputy Commercial Tax Officer
   Avinashi Road Circle
   Commercial Taxes Building
   Coimbatore - 18

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in its order in CTSA No.24 of 2005 dated 28.02.2007 and quash the same as illegal.

For Petitioner : Mr. S. Ramanathan
For Respondents : Mr. V. Prashanth Kiran
Government Advocate (Taxes) for R2

ORDER

(Order of the Court was made by R. Mahadevan, J)

The present writ petition is filed by the petitioner seeking to issue a Writ of Certiorari to call for the records of the first respondent relating to the order dated 28.02.2007 passed in CTSA No.24 of 2005 and quash the same.

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2. The petitioner company is a registered dealer under the Tamil Nadu General Sales Tax Act (in short, TNGST) and Central Sales Tax (CST) and is an assessee on the file of the second respondent herein. The petitioner company is a dealer in ready made PVC doors and sintex water tanks and they have reported a total and taxable turnover of Rs.52,65,438/- and Rs.48,86,818/- respectively for the assessment year 2002-2003 under the TNGST Act. On 24.01.2003, an inspection was conducted in the business premises of the petitioner by the enforcement wing officials, during which stock difference of doors were noticed. The inspecting team have also noticed difference in stock transfer from head office to their depot office, besides some other discrepancy with respect to dates in the delivery challan. On the basis of the documentary evidence seized during inspection, particularly the delivery challan relating to stock transfer, the second respondent passed the order of assessment dated 30.06.2004 in which the sales suppression was estimated at Rs.3,09,820/- besides adding 50% towards probable omission. In effect, the second respondent determined the total and taxable turnover at Rs.60,51,611/- and Rs.56,92,213/- respectively besides levying penalty of Rs.29,153/- under Section 12 (3) (b) of the TNGST Act.

3. Aggrieved by the order of assessment dated 30.06.2004, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT), Coimbatore. The appellate Authority, by the order dated 26.10.2004 refixed the turnover estimated based on stock difference at 50% amounting to Rs.20,520/- and deleted 50% addition for probable omission by holding that damaged doors were not taken into consideration and the entries in the stock register shows that the claim of the petitioner towards existence of damaged stock of PVC doors is well founded. As regards the discrepancy in delivery challan, the appellate authority has held that there is outward and inward entries and merely because there were over-writing in the delivery challan, it cannot be rejected.

4. As against the order dated 26.10.2004 of the appellate authority, the second respondent has filed an appeal before the first respondent/Tribunal. The first respondent allowed the appeal by the order dated 28.02.2007 and set aside the order passed by the Appellate Authority holding that there is a discrepancy in the entries in the delivery challan which was also admitted by the employee of the petitioner company at the time of inspection. Further, the first respondent observed that the inspecting officers have found only 700 numbers of doors transferred, whereas the petitioner has indicated the total number of doors as 759 and therefore, there is a difference in the number of doors actually transferred. This order dated 28.02.2007 of the first respondent is challenged in this writ petition.

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5. The learned counsel for the petitioner would contend that the first respondent has failed to consider that the stock difference of 59 doors was due to totalling mistake. The first respondent, without verifying the relevant entries in the stock register has concluded that there are some corrections taken place in the stock register and hence, it cannot be relied upon. Even though the petitioner has proved that the stock available is in accordance with the entries made in the stock register and the damaged doors were not accounted for, it was not accepted by the first respondent without assigning any valid reasons. On the other hand, the appellate authority concluded that stock of damaged doors is quite possible in the trade and accepted the claim of the petitioner after verifying the stock register, which finding was erroneously set aside by the Tribunal. The appellate authority also accepted the plea of the petitioner that the damaged PVC doors are yet to be replaced by the supplier especially those which were damaged during transit and during handling and this finding was also upset by the Tribunal without any justification. To substantiate this contention, the learned counsel for the petitioner placed reliance on three delivery challans dated 01.06.2002, 01.06.2002 and 06.06.2002 and submitted that by the said challans, 759 PVC doors were transferred from the head office to their godown. Subsequently, the said doors were sent back to the head office through the delivery challans dated 15.06.2002, 18.06.2002, 15.07.2002 and 26.10.2002. The inspecting officers have however declined to consider the inward receipt of 223 numbers of doors covered under Delivery challan No.549 and erroneously counted the actual stock available. It is further stated that the first respondent did not consider that the petitioner purchased most of the PVC doors from M/s. Sintex Industries Limited, Chennai by paying sales tax, therefore, if at all there is suppression, it should be only the second sales at the hands of the petitioner and liable for re-sale tax only at 1%. Above all, the first respondent has passed the impugned order without verification of delivery challan and has not given specific finding with reference to the particular delivery challan in the stock register. Therefore, it is contended by the counsel for the petitioner that the first respondent ought not to have set aside the well considered order passed by the Appellate Authority. The learned counsel therefore prayed for allowing this writ petition by setting aside the order dated 28.02.2007 passed by the first respondent-Tribunal.

6. On the other hand, the learned Government Advocate appearing for the second respondent submitted that only after inspection of the business premises of the petitioner, certain discrepancies have been unearthed. Based on the materials seized during such inspection, the Assessing Officer passed an order, which was partly interfered with by the appellate authority. As

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against the order of the appellate authority, the department went on appeal before the first respondent. The first respondent, while allowing the appeal concluded that the dealer had manipulated and have given fabricated figures. It was also observed that there is variation of entries and the calculation given by the dealer before the Appellate Assistant Commissioner has no co-relation at all for the doors that had been transferred and found during the course of inspection by the inspecting officers. Therefore, it was held by the first respondent that the Appellate Assistant Commissioner ought not to have accepted the contention of the dealer inasmuch as the delivery challan itself had 700 numbers and that the dealer had indulged with a malafide intention to evade payment of tax. Even the first respondent had perused the stock register at the time of hearing of the appeal and noticed that there were interpolations and the dealer was unable to co-relate the entries in the stock book. In the light of such findings rendered on facts, the learned Government Advocate prayed this Court that the order passed by the first respondent is based on available materials and it need not be interfered with by this Court.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Tax) for the second respondent.

8. The learned counsel for the petitioner mainly contended that the first respondent has passed the order, which is impugned in this writ petition, without physically verifying the delivery challans. It is also contended that the excess stock of doors noticed during inspection were either damaged doors or there is a calculation mistake made by the inspection team but it was not properly appreciated by the first respondent-Tribunal while allowing the appeal filed by the second respondent herein. This submission of the counsel for the petitioner cannot be accepted inasmuch as the Tribunal, in para No.9 of the order, which is impugned in this writ petition, has specifically stated as follows:-

> "9. ....When the matter was before us, at the time of hearing, the dealer had produced the stock book and it was found that there was interpolations and the dealer was not able to correlate the entries in the stock book. So he was given time and the case which was taken up for hearing on 13.02.2007 was adjourned to 16.02.2007 for filing the required documents. When the case was again taken up for hearing on 16.02.2007, the dealer filed the stock book which revealed that all the entries had been erased by whitener and the xerox copies of the stock book in which the figures had been erased were taken and xerox copies of the

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stock books was obtained and filed with the appeal file. As seen from the stock book the dealer had brought it to manipulate things which was not able to be done by him as it was brought to the notice of us. The dealer had erased the entire closing balances and that itself had clearly proved the fact that the dealer's acts are with the malafide intention to evade payment of taxes and he was not in a position to correlate the findings of the inspecting officers. So the difference of 225 nos. of doors had not been correlated by the dealer and the assessment that was made as a turnover of Rs.3,09,820/- by the Assessing Authority is restored setting aside the order of the Appellate Assistant Commissioner."

9. Thus, the Tribunal, on perusal of the stock register or the records relating to the case, has rendered a specific finding that there were interpolations made in the entries in the stock register and therefore, the plea of the petitioner cannot be accepted. Such a finding of fact rendered by the Tribunal is not required to be interfered with by this Court. On the whole, the various findings rendered by the Tribunal in the order, which is impugned in this writ petition, are based on material evidence over which this Court cannot interfere in exercise of the jurisdiction conferred under Article 226 of The Constitution of India. Therefore, we are of the view that there is no illegality or perversity in the order passed by the first respondent-Tribunal, warranting our interference.

10. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench) Coimbatore
Commercial Taxes Building
Coimbatore - 18

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2. The Deputy Commercial Tax Officer
   Avinashi Road Circle
   Commercial Taxes Building
   Coimbatore - 18

+1cc to Mr. S. Ramanathan, Advocate, S.R.No.12561
+1cc to the Special Government Pleader(Taxex), S.R.No.13460

WP No. 146 of 2008

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