IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM:

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

W.P.No.33256 of 2007

M/s.Sumangali Jewellers,
Rep. by its Proprietor,
M.Parasmal Jain,
No.109, Car Street,
Tiruvannamalai. ..Petitioner

Vs

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal (MB),
2nd Floor, City Civil Court Building,
Chennai 600104.

2.The Deputy Commissioner (CT)
Vellore Division, Vellore.

3.The Deputy Commercial Tax Officer,
Tiruvannamalai. ..Respondents

PRAYER :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 STA.No.348/03, dated 07.06.2007 and quash the order dated 07.06.2007.

For Petitioner : Mrs.C.Rekha Kumari

For Respondents: Mr.NRR.Arun Natarajan
Special Government Pleader (Taxes)

ORDER

[Order of the Court was made by R. MAHADEVAN, J.]

The prayer made in this Writ Petition is to issue a writ of certiorari to call for the records of the Tamil Nadu Sales Tax Appellate Tribunal (MB) / first Respondent pertaining to the order dated 07.06.2007 made in STA.No.348/03 and quash the same.

2.The facts in brief are that the petitioner is a dealer in gold and silver jewellery and the articles made out of it. For the assessment year 1996-97, the assessing officer, after inspection of the petitioner's business premises by the Enforcement Wing Officials and upon scrutiny of records, assessed 1900 grams of gold jewellery to the value of Rs.7,22,000/- and levied purchase tax at 2% under section 7A of the TNGST Act, by order dated 21.11.1997. The said order was challenged before the Appellate Authority, who partly allowed the appeal and remanded the matter to the assessing officer for fresh consideration. Thereafter, the assessing officer passed the reassessment order on 09.08.2000, levying purchase tax at 2% on the value of gold jewellery of Rs.7,22,000/-, besides additional sales tax of Rs.1,722/- for the period from 01.04.1996 to 31.07.1996 and penalty of Rs.5,825/- under section 12(3)(b) of the TNGST Act. The petitioner challenged the said assessment order before the Appellate Authority, who modified the order of the assessing officer by setting aside the levy of purchase tax at 2% on the value of gold jewellery of Rs.7,22,000/- and penalty. Aggrieved over the same, the State carried the matter to the Tribunal by way of appeal. After detailed analysis, the Tribunal allowed the appeal and restored the order of the assessing officer. Therefore, the petitioner is before this court with the present writ petition.

3.According to the learned counsel for the petitioner, during the relevant period, the petitioner had received 1900 grams of gold valuing at Rs.7,22,000/- from three persons for safe custody and displaying it in its business premises; and there was no purchase of gold jewellery and conversion into new one; and therefore, the same is not liable to tax under section 7A of the TNGST Act. The learned counsel further submitted that the possession of the gold jewellery by the petitioner on paying rental amount of Rs.5/- per gram annually to the owners of the same, was duly reflected in the agreements entered into between the parties and the statement of accounts. Without taking into consideration those documents, the assessing officer had erroneously concluded that there was purchase suppression and hence, the value of the gold jewellery was liable to purchase tax under section 7A of the TNGST Tax. Though the appellate authority correctly modified the order of assessment, the Tribunal set aside the order of the appellate authority and confirmed the order of the assessing officer, which is arbitrary, illegal and contrary to law. Therefore, the learned counsel sought to allow this writ petition by quashing the order of the Tribunal.

4.On the other hand, the learned Special Government Pleader (Taxes) appearing for the respondents reiterated the averments made in the counter affidavit and submitted that the petitioner had entered into the receipt of gold jewels in its stock book maintained for the trade and converted them into new jewels; the stock books showed the stock of newly manufactured gold jewels only and they had not maintained separate stock account for the goods deposited by others; and hence, the Tribunal rightly held that the gold jewels received as deposit and used in manufacture of new ornaments attract liability under section 7A of the TNGST Act. Stating so, the learned counsel submitted that the order of the Tribunal does not call for any interference by this court.

5.This court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6.The short point that arises for consideration herein is as to whether the levy of purchase tax at 2% on the value of gold jewellery of Rs.7,22,000/- by the assessing officer as confirmed by the Tribunal is sustainable, when it was the case of the petitioner that they had received the same from three persons for safe custody and displaying in its business premises and there was no purchase attracting liability under section 7A of the TNGST Act.

7.At the outset, it is to be pointed out that the gold brought into the account of the proprietory business has to be treated as purchase of the proprietory concern, since the proprietor and the individual is one and the same and the gold used in manufacture and sales of gold ornaments are liable to tax under section 7A of the TNGST Act.

8.In the present case, after verification of the accounts for the years 1996-97 and 1997-98 and memorandum of declaration of deposit and refund of gold ornaments produced by the petitioner, it was found by the assessing officer that the dealer had received gold ornaments to the weight of 1900 grams from 3 persons on 28.11.1996; the receipt of such gold ornaments was entered in the regular stock book at page 47 / Vol.II on 28.11.1996; and the goods so received were sent for conversion and manufacture of new jewels along with the dealer's other purchases of old gold jewels. Further, the contention of the petitioner that the ornaments were received as deposit for show purpose, was not accepted by the assessing officer, taking note of the liberty granted to convert the gold ornaments into new one by melting process. Ultimately, the assessing officer rendered the following findings:

> "The dealers have received the gold ornaments from the 3 persons on 28.11.1996. But they had filed a letter along with A1 return on 03.03.1997 stating the fact of having received the gold ornaments as deposit. In the mean while, on 07.01.1997, the place of business of the dealer was inspected by the

Enforcement wing Officers. Though the dealers have received the gold ornaments even before the date of inspection, they have not made any such deposition before the inspecting officer. The statement deposited by them on 07.01.97 do not reveal any receipt of gold ornaments as deposit. In the dealers letter dated 03.03.97, they have stated that the gold ornaments were received as deposit only that they are not the owner of the goods and the same are returnable to the depositors. If the above contentions are true, they might have revealed it before the inspecting officer on 07.01.97. But no such information was forthcoming at the time of inspection. Even at the time of stock taken by the Inspecting Officers, no separate stock of deposit of gold ornaments was declared. Hence the gold ornaments received as deposit are only in the course of purchase made for their business. The Memorandums are created to suit the dealers convenience. Therefore, the gold ornaments received as Deposit at Rs.7,22,000.00 are held as purchases liable to tax at 2% as they were used in conversion of new ornaments."

9.Though the appellate authority set aside the order of assessment by holding that by those transactions, only the right to use the ornaments was transferred from three persons to the dealer and there was no direct purchase or sale involved; and that, the department had failed to prove with documentary evidence the alleged conversion of old ornaments into new one by the dealer, the Tribunal after elaborately analysing all the materials available before the same, observed that though the assessee contended that it is only a deposit by three individuals, they could have informed at least immediately after the inspection, but not certainly after two months; and therefore, the so called agreements and the theory of deposit were unbelievable. While observing so, the Tribunal came to the conclusion that the tax levied by the assessing officer under section 7A of the Act was correct and accordingly, set aside the order of the first appellate authority and restored the order of the Assessing Officer.

10.Having regard to the admitted fact that though the petitioner said to have received 1900 grams of gold ornaments from 3 persons for deposit purpose on 28.11.1996, they had not declared the said fact of deposit before the Enforcement wing officials on 07.01.1997 and that, they admitted the entire stock of gold ornaments to be its own stock only at the time of inspection; and no separate stock book was maintained by the petitioner for such deposit, this court finds no reason to differ with the view so taken by the Tribunal. Therefore, the contention raised on the side of the petitioner that there was no purchase of gold jewellery by the assessee, but only a deposit or loan of such jewellery from the relatives and the same does not attract the levy of purchase tax under section 7A of the Act, cannot be accepted.

11.In such view of the matter, this court holds that the Tribunal has rightly restored the order of the assessing officer and set aside the order of the appellate authority and hence, the order of the Tribunal does not require any interference. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dhk/sai

To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal (MB),
2nd Floor, City Civil Court Building,
Chennai 600104.

2.The Deputy Commissioner (CT)
Vellore Division, Vellore.

3.The Deputy Commercial Tax Officer,
Tiruvannamalai.

+1cc to M/s.C.Rekha Kumari, Advocate, S.R.No.8072

+1cc to Special Government Pleader(Taxes), S.R.No.8379

W.P.No.33256 of 2007

PMK(CO)
RGA(03/03/2022)