IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR .JUSTICE C.SARAVANAN

W.P. No. 44961 of 2006

&

M.P. No. 1 of 2006

Tvl. Hotel New Raja,
rep. by its Partner S. Shanti
11/12-A, Kalpana Road,
Udumalpet, Coimbatore District. ..Petitioner

Vs.

1. The Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore, Commercial Taxes Buildings, Coimbatore – 18.

2. The Commercial Tax Officer, Udumalpet (South) Circle, Udumalpet, Coimbatore District. ..Respondent

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 1st respondent in its order in C.T.S.A. No. 284/2004 dated 28.03.2006 and quash the same as illegal.

For Petitioner	::	Mr.S. Ramanathan
For Respondents	::	Mr.T.N.C. Kaushik, Addl. Govt. Pleader

<u>O R D E R</u>

<u>S. VAIDYANATHAN,J.</u>

<u>AND</u>

<u>C. SARAVANAN,J.</u>

This writ petition has bee filed against the final order dated 28.03.2006 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in C.T.S.A. No. 284 of 2004. By the impugned order, the Tribunal has partly allowed the appeal filed by the Commercial Tax Department refixing the turnover of the petitioner as Rs.40,07,450/- and remanded the case back to the Original Authority for imposing proportionate penalty under Section 12(3) of Tamil Nadu General

Sales Tax Act, 1959 (in short, 'TNGST'Act).

2. The facts on record indicate that the petitioner had declared a taxable turnover of Rs.7,78,302/-. A surprise inspection was conducted during which the officers of the Commercial Tax Department found certain notes/slips. Based on the entries made by the petitioner in these notes, which were found in the books and marked as A & B, the Assessing Officer had arrived at the total taxable turnover of the petitioner as Rs.49,13,582/- as detailed below:

'Sales turnover as per account	Rs. 7,78,302.00	
Add: 10% for	Rs. 77,830.00	
Total	------------------------	Rs.8,56,132.00
Add: Actual Suppression as arrived as per entries in the records recovered		
As per entries in the book mark "A"& "B" (From 01.04.98 to 05.10.98)	Rs.20,03,725.00	
Add: equal for the remaining period (from 6.10.98 to 31.03.99)	Rs.20,03,725.00	

Total		Rs.40,07,450.00

Proposal for Levy of Tax under
Sec.7-A Estimate value of ingredient
such as Masala power and Cashewnut
were used to add to the taste of
food stuffs prepared and served to
customer for which no purchase bill
were produced.

Masala Powder 40,000 taxable at 8%	Cashewnut Powder 10,000/- taxable at 4%	Rs.50,000.00
Taxable Turnover proposed		Rs.49,13,582.00

3. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT), Pollachi. The Appellate Assistant Commisioner had refixed the taxable turnover of the petitioner as Rs.23,33,142/- as detailed below:

1. Total receipt noticed and arrived at from the entires mde in the records recovered for the period from 1.4.98 to 5.10.97.	Rs.3,88,857/-
2. As the entires found in the records related only to the coins, provision has made for the receipt of currency notes for each day by adopting 2 times the figure arived at	Rs.7,77,714/-
	Rs.11,66,571/-

Add: Equal time in receipt of sales effected from

6.10.98 to 31.3.99	Rs.11,66,571/-
Total	Rs.23,33,142

The discussion in the order of the Appellate Assistant Commissioner in the petitioner's appeal No. 231 of 2002 dated 13.05.2003 reads as hereunder:

> *'On the day of inspection survey was also conducted by the Inspecting Officers and they have noticed the total sales on that day worked out to Rs.5638/- only. Even by adopting this figure and without giving allowance to holiday or Sunday, the total turnover worked out Rs.20,57,870/- only. I hold that the method adopted by the Assessing Officer in determining the turnover at Rs.49,13,582/- was quite irregular; when sales were adopted for the whole year with reference to the records recovered, he should not have added the turnover reported by the appellants for which he has also made addition of 10% without assigning any proper reason. By way of adoption of correct method with reference to the records recovered the maximum turnover that could be fixed for the year 1998-99 works out Rs.23,33,142/- only, which is below taxable limit of Rs.25,00,000/- for that year. Further the assessment made under Sec.7-A on the purchase of Masala powder and cashewnut was made without any basis and reasons and they are also ordered to be delted. As the turnover worked out by way of proper and correct*

calculation is below Rs.25,00,000/-which is taxable limit for the year 1998-99, I order for the setting aside of the assessment made by the Assessing Officer for the year 1998-99.'

4. Learned counsel for the petitioner has placed reliance on the decision of this Court rendered in ***S.R.S. Industries V. State of Tamil Nadu*** reported in ***[2011] 42 VST 166 (Mad)*** and therefore submits that there is no justification in adding equal amount to the taxable turnover without any tangible evidence. It is further submitted that if equal addition is removed and the order of the Appellate Assistant Commissioner is upheld, the petitioner's turnover will be below Rs.25 lakhs and therefore, the petitioner is not required to pay tax in terms of Section 3-D of TNGST Act, 1959 read with Part A to 9th Schedule to the said Act. Consequently, the question of imposing penalty under Section 12(3) of TNGST Act,1959 also does not arise. Learned counsel for the petitioner has also placed reliance on the explanation to Section 12(3) of TNGST Act, 1959 which reads as under:

Section 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

5. Opposing the writ petition, learned Additional Government Pleader for the Commercial Tax Department submits that the impugned order is well-reasoned and requires no interference. It is submitted that the order passed by the Appellate Tribunal reversing the order of the Appellate Assistant Commissioner cannot be interfered with as the petitioner has suppressed the turnover and the taxable turnover and therefore, the order passed by the Commercial Tax Officer vide order dated 16.09.2002 for the assessment year 1998-99 deserves to be upheld as confirmed by the Appellate Tribunal.

6. We have given our careful consideration to the orders passed

by the Commercial Tax Officer, Appellate Assistant Commissioner and the impugned order passed by the Appellate Tribunal.

7. The facts on record clearly indicate that the petitioner has admitted the taxable turnover of Rs.7,78,503/-. The respondent, namely, the Department has added a sum of Rs.20,03,725/- based on the entries in the books maintained by the petitioner between 01.04.1998 and 05.10.1998 and has added an amount equal to the aforesaid amount for the period from 06.10.1998 to 31.10.1999.

8. *Prima facie, w*e are of the view that an equal addition of Rs.20,03,725/- cannot be sustained in the absence of any tangible evidence. Though the Department is required to invoke best judgment method where there is suppression of information and the facts on record indicate that tangible evidence were recovered and based on the same, a sum of Rs.20,03,725/- was added, there can be no further addition to the suppressed turnover. Under these circumstances, we are inclined to modify the impugned order and re-determine the turnover of the petitioner. We are also

inclined to uphold the purchase tax under Section 7A on Masala Powder and Cashewnut Powder , which were used for suppressed turnover. Therefore, the turnover is re-determined as follows:

'Sales turnover as per account		Rs. 7,78,302.00
As per entries in the book mark "A" & "B" (From 01.04.98 to 05.10.198)		Rs.20,03,725.00
	Total	Rs. 27,82,027.00

Proposal for Levy of Tax under Sec.7-A Estimate value of ingredient such as Masala power and Cashewnut were used to add to the taste of food stuffs prepared and served to customer for which no purchase bill were produced.

Masala Powder 40,000 taxable at 8%	Cashewnut Powder 10,000/- taxable at 4%	Rs. 50,000.00
	Taxable turnover proposed	Rs.28,32,027.00

The tax liablity of the petitioner therefore would be in terms of S.No.1 to Part A to 9th Schedule to TNGST Act, 1959 as the petitioner's turnover has not exceeded 30 lakhs during the assessment year in question. Accordingly, the petitioner is liable to pay tax of Rs.24,000/-.

9. As far as imposition of penalty under Section 12(3)(b) is

concerned, we are of the view that there is suppression and therefore, proportionate amount of penalty has to be levied on the petitoner. Under these circumstances, we are inclined to remit the case back to the Assessing Officer insofar as imposition of penalty is concerned.

10. Considering the fact that the dispute pertains to the assessment year 1998-99, the 2nd respondent/Commercial Tax Officer shall pass appropriate orders insofar as imposition of penalty is concerned, within a period of three months from the date of receipt of a copy of this order. The petitioner is given liberty to make additional submissions, if any, before the 2nd respondent. It is needless to state that the petitioner shall also be heard before orders are passed by the 2nd respondent.

11. The writ petition stands partly allowed with the above observations,. No costs. Consequently, connected M.P. is closed.

(S.V.N.J.) (C.S.N.J.)
19.10.2022

nv

To

The Commercial Tax Officer,
Udumalpet (South) Circle,
Udumalpet, Coimbatore District.

S. VAIDYANATHAN,J.

W.P. No. 44961 of 2006

AND

C. SARAVANAN,J.

nv

W.P. No. 44961 of 2006

19.10.2022