IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-10-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.3735 of 2008

M/s.Southern Marketing Corporation ... Petitioner

-vs-

1.Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Coimbatore – 641 018.

2.The Appellate Assistant Commissioner
of Commercial Taxes,
Erode.

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

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the records on the file of the first respondent in his order in Coimbatore Tribunal Appeal No.293/2001, dated 29.12.2006, which was served on the petitioner on 13.08.2007 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondents 2 & 3 : Mr.V.Prashanth Kiran,
Government Advocate (Taxes).

ORDER

This Writ Petition has been filed against the impugned order, dated 29.12.2006, passed by the first respondent - Sales Tax Appellate Tribunal in Appeal No.293 of 2001. The dispute pertains to the Assessment Year 1994-1995.

2. The facts on record indicate that earlier the petitioner had suffered an adverse order in the hands of the third respondent – Deputy Commercial Tax Officer on 31.01.1996. Aggrieved by the same, the petitioner preferred an appeal before the second respondent – Appellate Assistant Commissioner, who, by an order, dated 30.12.1996, remanded the case back to the third respondent to pass a fresh order. Thereafter, the third respondent passed a fresh order on 31.03.1999, whereby the demand was confirmed once again. Aggrieved by the same, the petitioner preferred an appeal in A.P.No.275/1999 before the second respondent – Appellate Assistant Commissioner, which culminated in a favourable order, dated 14.12.1999. Aggrieved by the same, the State preferred an appeal before the first respondent – Appellate Tribunal in C.T.A.No.293/2001, wherein the order of the third respondent has been confirmed. Hence, this Writ Petition by the petitioner.

3. Learned counsel for the petitioner submits that the impugned order of the Tribunal upholding equal addition of the alleged suppressed sales turnover is unsustainable. It is further submitted that the petitioner has produced records to substantiate that there were no inter-state purchases from Maharashtra, Karnataka and Andhra Pradesh of edible oils and, therefore, the proposal that was confirmed by the original authority and reversed by the first appellate authority ought not to have been disturbed. In support of his case, learned counsel for the petitioner has placed reliance on the following decisions :

(i) S.V.Cycle Stores v. Commercial Tax Officer, 2011 SCC OnLine Mad 2746, and

(ii) Sri Ramu Furniture Company v. State of Tamil Nadu, 2011 OnLine Mad 2712.

4. Learned counsel for the respondents submits that the impugned order of the Tribunal is well reasoned and it requires no interference. It is submitted that there is no violation of principles of natural justice or procedural irregularity, warranting interference. It is further submitted that the Tribunal is the ultimate finding authority and based on the facts arrived at before the Tribunal, the order of the second respondent, namely, the Appellate Assistant Commissioner has been reversed and the order of the third respondent – Deputy Commercial Tax Officer has been affirmed.

5. We have considered the arguments advanced by the learned counsel for the parties.

6. Based on the records, the respondents have recovered material from the check-post to substantiate the suppression of turnover by the petitioner. The proposal as in the original assessment order as also in the de novo order indicates that the petitioner had purchased edible oils from dealers from three different States for a total sum of Rs.33,34,401/-, to which 2% was added as freight and 15% thereof towards gross profit to arrive at the estimated first sales of edible oils at Rs.39,11,252/-, as detailed below :

"Proposal :-

	1.Inter-state purchases of sunflower refined oil and Rice Bran refined oil detailed in part I & II.	Rs.26,53,651.00
	2.Inter-state purchases of Palmolein oil of two loads as detailed in part III	Rs. 6,80,750.00

	Total	Rs.33,34,401.00
ADD :	2% for freight	Rs. 66,688.00

		Rs.34,01,089.00
ADD :	15% gross profit	Rs. 5,10,163.00

Estimated 1st sales of edible oils	Rs.39,11,252.00
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In the de novo proceedings also, a more detailed calculation has been arrived at by the third respondent.

7. The question that arises for consideration is, whether equal addition can be made in the absence of any document, merely because the petitioner was found lacking in making adequate declaration and was indulging in suppression of sales turnover ?

8. It is true that the respondents are entitled to make an assessment based on the best judgment method. It is, however, not open for the respondents to impose/add equal addition without any documents to substantiate the same. There cannot be assessment by sampling. In this connection, it is useful to refer to a decision of the Supreme Court in Rukumand Bairoliya v. State of Bihar, (1971) 3 SCC 167 = AIR 1971 SC 746, wherein it was held that assessment cannot be based on assumptions, presumptions and conjecture. At the same time, the conduct of the petitioner indicates that the petitioner has suppressed sales turnover to evade tax.

9. Considering the same, we are inclined to modify the order of the Tribunal by directing an addition of 50% on the suppressed sales turnover instead of equal addition. The third respondent is directed to revise the calculation and issue an appropriate demand notice together with interest thereon to the petitioner in terms of the

above order within a period of 45 days of receipt of this order, which shall be paid by the petitioner within 30 days thereafter.

10. Writ Petition stands partly allowed. No costs. Consequently, the connected M.P.No.1 of 2008 is closed.

Index : Yes/No (S.V.N.,J.)
(C.S.N.,J.)
Internet : Yes/No 26-10-2022
Speaking / Non-speaking Order

dixit

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