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W.P.Nos.4303 and 4304 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.11.2022	21.12.2022

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.4303 and 4304 of 2008

M/s.Tirupur Sree Annapoorna,
Rep. by its Partner,
S.Deenadayalan,
No.9-A, Kumaran Road,
Tirupur.

... Petitioner in both Writ Petitions

VS.

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

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

3. The Commercial Tax Officer,
Tirupur (Central-II),
Tirupur.

... Respondents in both Writ Petitions

Prayer in W.P.4303/2008: Writ Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the file of the 1st Respondent in his order in Coimbatore



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Tribunal Appeal No.127/2002 dated 31.10.2006 and quash the same.

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Prayer in W.P.4304/2008: Writ Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the file of the 1st Respondent in his order in Coimbatore Tribunal Appeal No.125/2002 dated 31.10.2006 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For R1 : Tribunal

For R2 & R3 : Mr.V.Prashanth Kiran
Govt. Advocate

COMMON ORDER

(Order of the Court was made by S.VAIDYANATHAN,J.)

These Writ Peitions have been filed, challenging the orders of the Tribunal / 1st Respondent herein dated 31.10.2006 made in Coimbatore Tribunal Appeal Nos.127 & 125 of 2002 respectively, by which the Appeals filed by the State were allowed and the amount of taxable turnover so determined by the 3rd Respondent herein was upheld by the Tribunal.

Brief Facts in nutshell:



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2. Since the issue involved in these petitions is one and the same, both the petitions are clubbed together for final disposal. For the sake of brevity, facts are being taken up from W.P.No.4303 of 2008 and the parties are referred to by their original nomenclature as found in these petitions.

3. It was submitted by the Petitioner / Hotelier that they are into hotel business for several years and for the assessment year 1995-1996, a total taxable sales turnover of Rs.52,39,203/- and Rs.12,064/- by way of returns in Form A1 was shown in respect of Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets as per Section 3(1) of the TNGST Act, 1959. However, the 3rd Respondent had rejected such calculation on the ground that the Registration Certificate, which was applied for Sri Annapoorna Sweets, a sister concern of Tirupur Sree Annapoorna Hotel was not accepted for registration and therefore, the 3rd Respondent reworked the taxable income and determined as Rs.66,60,363/- and Rs.14,35,123/- respectively towards the turnover for the year.

3.1. It was further submitted that aggrieved by the assessment of the



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3rd Respondent, the Petitioner preferred an appeal under Section 31 of the TNGST Act, 1959 before the 2nd Respondent in A.P.No.362 of 1999 and in the grounds of appeal of the petitioner, it was stated thus:

i) the 3rd Respondent, on the basis of the cash flow found with the cashier on a particular day, erroneously worked out the sales turnover for six months and the sale of a single day could not be the standard calculation for the entire period of six months, as, in a hotel business, there is every possibility of fluctuation of sales turnover on various factors, such as seasonal factors, festival seasons, etc.;

ii) the exempted sale of sweets and karams amounting to Rs.14,21,059/- belonging to another concern cannot be added to the petitioner's concern, as, food, which is a general term, cannot denote only meals in the light of the judgment of Andhra Pradesh High Court in the case of Jaya Food Industries (P) Ltd., vs. Commercial Tax Officer, Nampally Circle, Hyderabad, reported in (1991) 82 STC 319 by holding that "food ordinarily cannot what can be readily eaten; which is consumed



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straightaway going into some sort of processing".

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iii) the petitioner's sister concern, namely, Sri Annapoorna Sweets, a partnership firm registered with Registrar of Firms, Tirupur, is a separate legal entity and treating it to be a different concern, the Income Tax Department had all along assessed the turnover and income tax return was also filed as a different firm based on the accounts maintained by Sri Annapoorna Sweets;

iv) The action justified by the 3rd respondent to the extent that the petitioner was willing to club the turnover of Sri Annapoorna Sweets for the assessment year 1997-1998 and therefore, the same method was adopted for the year 1995-1996 was highly ridiculous. It was also urged that the penalty under Section 12 (3) of the Act cannot be levied after a lapse of five years.

4. The 2nd Respondent, upon considering the grounds raised by the petitioner, had passed an order on 26.11.2001, holding that the Assessing Officer must establish that both are one and the same, when the petitioner



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herein had clearly proved with regard to maintenance of difference accounts by Sri Annapoorna Sweets. It was further held that the assessment of two turnovers for the year 1992-1993, based on the willingness to club the turnovers from the assessment year 1997-1998 is highly unfair and unreasonable. Thus, the assessment made by the Assessing Officer was set aside and the appeal preferred by the petitioner was allowed.

5. Challenging the order passed by the Appellate Authority, the Revenue filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore / 1st Respondent herein. The Appellate Tribunal, without appreciating the materials placed before it and on the basis of mere surmises and conjectures, passed an order in Coimbatore Tribunal Appeal No.127/2002 dated 31.10.2006, thereby restoring the order of the Assessing Authority. The order of the 1st respondent was assailed on the same grounds raised before the 2nd Respondent by the Writ Petitioner and on the following additional grounds:

i) that functioning of another firm in the same premises is not a



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criterion for refusal to treat as a separate unit and there was no discussion on the observation made by the 2nd Respondent with regard to the rejection of application dated 16.05.1991 and 25.01.1999, wherein it was recorded that the partner of Sri Annapoorna Sweets had claimed to have maintained separate accounts and she had requested to assess the above firm separately and to issue Registration Certificate;

ii) that the observation of the 1st Respondent that the Hotel including the sweet stall can be considered as a single entity only when exemption was granted by introduction of Entry 48 of Part B of Third Schedule to the TNGST Act, was utter vague and the reasons attributed by the 1st Respondent for restoration of the order of the 3rd respondent are far from imagination.

6. Thus, it was argued that the order of the 1st Respondent is devoid of merits and against the principles of natural justice.

7. The 3rd respondent has filed a counter affidavit, in which it has



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been *inter alia* stated as follows:

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i) At the time of finalization of assessment for the year 1992-1993 and 1995-1996, it was noticed that both the petitioner concern and Sree Annapoorna Sweets were located in the same premises by sharing the common kitchen, even though there were two accounts for evading payment of taxes. It was found that there was no bifurcation of salary of employees and electricity meters and the amount for sweet sales and hotel section was received in the cash counter of the Hotel section only;

ii) Even though the petitioner had accepted the clubbing of sales turnover for the year 1997-1998 onwards, such method of business activities were going on prior to 1997-1998 and therefore, the levy under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 cannot be said to be improper and since the original assessment was completed within the time stipulated, the question of limitation, viz., expiry of 5 years, does not arise at all;

iii) The 1st Respondent has rightly observed that the petitioner herein,



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in order to evade payment of taxes, had created a fictitious firm by name Sri Annapoorna Sweet Stall, which actually did not exist and as the sweet stall was a part and parcel of the hotel, the turnover was assessed together, which is in order and in accordance with law, warranting no interference by this Court.

8. Learned counsel for the petitioner has submitted that the application for Registration Certificate was rejected after a period of 30 days from the date of application and as per the procedure for registration, if the certificate of registration is not received by the applicant within thirty days from the date of his application or if no notice is received by him within the said period, the applicant shall be deemed to have been duly registered. Thus, Sri Annapoorna Sweet Stall was entitled to a deemed registration and the said aspect has not been considered by the 1st respondent. It was further submitted that the 1st Respondent has lost sight of the fact that there was a separate books of accounts being maintained in the name of Sri Annapoorna Sweet Stall and hence, the observation made by the 1st Respondent that a fictitious firm was created in order to evade payment



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of taxes has no legs to stand. When the petitioner had agreed for clubbing of the turnover of Sri Annapoorna Sweet Stall for the assessment year 1997-1998, it was highly ridiculous on the part of the Assessing Authority to demand such clubbing of turnover from 1992-1993 itself. It was also vehemently argued that no clinching materials were produced on the side of the 3rd respondent to establish that both Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets are one and the same and mere citing of revenue loss without supporting documents cannot be accepted in general.

9. Learned Government Advocate appearing for R2 and R3 has strenuously contended that the 1st Respondent / Tribunal rightly came to the conclusion that Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets are single entity on the reasoning that both firms are situated in the same premises and there cannot be two different rents for the same premises having two different rent agreements and payments to the owner of the building. In the given circumstances, no fault can be attributed to the action of the Assessing Authority for clubbing the turnover pertaining to the sister concern of the petitioner with that of the petitioner's hotel and it cannot at

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any stretch of imagination be said to be incorrect. It was further contended that the petitioner herein, in the guise of formation of a sister concern without Registration Certificate cannot be permitted to cause loss to the Revenue and to evade payment of tax and therefore, an average sales for hotel section was worked out purely in the interest of Revenue.

9.1. It was also contended that after witnessing the commonality of business transaction carried out in the premises, no prudent man would dare to say that it was a different entity, especially when there was a common cash counter for collection of amount towards sales of both concerns. Except having separate books of account and raising bills, the entire business activities were carried out under one roof in and around the same locality and the cash was received in the same counter. Though the petitioner referred to the Registration Certificate to treat Sri Annapoorna Sweets to be a different unit, there was no such certificate in possession of the petitioner and therefore, the 1st Respondent has rightly come to the conclusion that the alleged formation of a sister concern without valid Registration Certificate, namely, Sri Annapoorna Sweet Stall is only for the

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purpose of evading payment of tax. It was finally contended that the order of the 1st Respondent confirming the assessment made by the Authority is perfectly justified and sustainable.

10. Heard the learned counsel for the petitioner, learned Government Advocate appearing for R2 and R3 and perused the material documents available on record.

11. A narration of facts as projected by the parties unravels that admittedly, a business transaction is being performed in the name and style of Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets. Even though there is no question of law involved in this case, the core issue to be decided is whether Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets are one and the same or different entities, so as to entitle them to calculate the sales turnover by branding them as independent firms. According to the petitioner, the total sales turnover for Tirupur Sree Annapoorna comes to Rs.52,39,203/- and Rs.12,064/- by way of returns in Form A1. The said turnover and return was disputed by the Assessing

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Authority, stating that there were no documents produced to justify that both Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets are unassociated establishment, having no interconnection with the business activities of each other and therefore, determined the total and taxable turnover for the year 1992-1993 at Rs.58,81,948/- and Rs.66,60,363/- for 1995-1996.

12. Let us at the first blush analyze as to what do the words "Sister Concern" denote in general term? The exact definition for the words "Sister Concern" indicate that Sister Concerns are two or more contrasting organization under the ownership of the same owners / Corporates. The minimum requirement to treat it as a sister concern is that the activities of sister concerns must not have any connection with the operations of each other's business. To be more specific, except for their common owners, legally or financially, they are not related to each other. Though it is permitted to have close affiliations with another company with a separate name and personnel and both companies can be owned by the same parent, the parameter attributed to Sister companies is that it should function



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independently of one another in its entirety.

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13. A perusal of the assessment order unravels the fact that the dealer, namely, Tirupur Sree Annapoorna Hotel had, though, maintained separate accounts for sweet stall and hotel, there was no set up of detached kitchen and even both concerns were functioning in the same site. There was no proof adduced regarding disbursement of salary to the employees under different salary slips and on scrutiny of bills, it came to light that bills for common telephone expenditure and electricity charges were raised. Above all, there was a common cash counter for collection of sale amount in respect of both sweets and hotel. There is not even an iota of material evidence adduced to establish that Sree Annapoorna Sweet stall is the sister concern of the petitioner herein. The plea raised that even Income Tax Department assessed the turnover by treating both concerns as different units, cannot be the valid ground to state that the very same yardstick should be adopted in respect of levy of commercial tax also. The petitioner, by adopting business tactics, projects to its customers that both are same entities by way of issuance of bills in the name of Tirupur Sree Annapoorna



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Hotel and while showing the sales turnover to concerned Departments, there

is a sudden flair up that Sree Annapoorna Sweet Stall is the sister company of Tirupur Sree Annapoorna Hotel and there was a protest against the assessment of conjoint turnover. There is a famous saying of Abraham Lincoln that "You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time", translation of which in Tamil language is that "பலரை சில காலமும், சிலரை பல காலமும் ஏமாற்றலாம். ஆனால் எல்லோரையும் எப்போதும் ஏமாற்ற முடியாது."

14. The act of the petitioner herein is an attempt to swindle exchequer's money by evading payment of tax and if the contention of the petitioner that Tirupur Sree Annapoorna Hotel and Sree Annapoorna Sweets are independent entities is accepted, then the term "sister concern" will become diluted and all the firms will adopt the same tactics of creation of one or more sister concerns under one umbrella with different names and claim the benefit of tax. In that event, it will defeat the real intention of the legislature.

15. The petitioner drew our attention to the deeming provisions of the



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Tamil Nadu General Sales Tax Rules, 1959 to defend that the deeming provision will automatically come into operation, if there was no response on the certificate of registration within thirty days from the date of application. In the present case on hand, the application for grant of registration certificate was rejected by the Commercial Tax Officer, Tiruppur as early as on 25.01.1999 and thereafter, the petitioner had preferred an appeal before the Deputy Commissioner (CT), Coimbatore Division, in which, the rejection order was set aside and remanded to the Original Authority for fresh consideration. It is not known whether the petitioner has either questioned the said order or contested before the Original Authority as per the remand order.

16. The Assessing Authority, in support of his assessment by clubbing both units as one, had stated that based on the divulgence of the petitioner that Sree Annapoorna Sweet Stall got merged with Tirupur Sree Annapoorna Hotel with effect from 01.04.1997, common assessment was made by branding them as a single unit. Even prior to that, the petitioner was not in possession of valid registration certificate and therefore, it cannot



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be contended that the petitioner is entitled to the tax benefit for the previous year.

17. It is saddening to note that tax evasion has been mushrooming in our State / Country day- by-day, which is purely illegal and such evasion includes hiding of true income and portrayal of false income, not reporting cash flow, etc. The companies / firms / entities, which evade payment of tax are liable to be punished under criminal charges with substantial penalties. It is pertinent to state that taxes are the main sources of income for the Government to concentrate on the welfare of the people and the monies can be invested in various development projects. The firms, which pay taxes equally find ways and means not to pay it also as that of the petitioner herein, on account of which, our State / Country has been facing massive problem. According to a report of National Restaurant Association of India (NRAI), hotel business is the fastest-growing one in the world and is expected to reach INR 5.99 Lakh Crore by 2022-2023. Despite such growth, owners of hotels / restaurants do not show any inclination to pay taxes, which is meant for public and few hotels not only evade taxes, but also



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cause health hazard to public by their act of intentionally debasing the quality of food by replacing the food substances with undeclared alternative components.

18. By and large, in our considered opinion, the petitioner herein deserves no leniency from this Court, as the Tribunal has rightly analyzed the evidence on record and restored the findings of the Original Authority. Since there is a finding of fact and no question of law is involved, we are of the view that there is no perversity in the findings of the Tribunal, warranting interference by this Court.

19. In the result, these Writ Petitions are dismissed. No costs.

(S.V.N.J.) (C.S.N.J.)
21.12.2022

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
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To:

1. Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Coimbatore-641 018.
2. The Appellate Assistant Commissioner
of Commercial Taxes,
Pollachi.
3. The Commercial Tax Officer,
Tirupur (Central-II),
Tirupur.

S. VAIDYANATHAN,J.

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AND
C. SARAVANAN,J.
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Pre-delivery Order in
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