IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. No.7665 of 2006 and
W.P.M.P. No.8428 of 2006

M/s.P.G.D. & Brothers
No.1/4460, Mallanginar Road
Virudhunagar .. Petitioner

Vs.

1.The Joint Commissioner (CT)-III
(SMR) Office of the
Commissioner of Commercial Taxes
Chepauk, Chennai - 600 005

2.The Appellate Assistant Commissioner (CT)
Virudhunagar

3.The Commercial Tax Officer - III
Virudhunagar .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari, to call for the records of the first respondent in its impugned proceeding in Ref.MI/22074/96 SMR No.11/225/98 dated 05.07.2005 relating to the assessment 1993-94 and quash the same.

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For Petitioner : Mrs.Lakshmi Sriram,
for M/s.T.Ramesh Kutty

For Respondents : T.N.L.Kaushik,
Addl. Govt. Pleader (Taxes)

O R D E R

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

We have heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) appearing for the respondents and perused the materials available on record.

2. In this writ petition, the petitioner has challenged the order passed by the first respondent/Joint Commissioner (CT)-III, Chennai, pursuant to a notice issued under Section 34 of the Tamil Nadu General Sales Tax Act, 1959, seeking to revise the order of assessment as modified by the Appellate Assistant Commissioner (CT), Virudhunagar/second respondent vide order dated 09.11.1995 made in A.P. No.784/95 allowing the appeal with the following observations:

4. The arguments advanced by both the parties were examined with reference to assessment records. The main reason for the addition and estimation is the entires found in the student note book recovered under D7 slip and the non-accounting of purchase Bill No.A/100/93-94 dated 22.7.93 issued by

Tvl.Maheswari Trading Company, Solapur for Rs.68,620/-. When the shop was inspected on 13.10.93, the appellants have written the day book only upto 5.8.93. By that time, the purchase bill received from Solapur for Rs.68,620/- was found not accounted for. Anyhow, the same purchase bills found accounted for at page 48 of the day book and at page 20 of the stock book. But, during that time of inspection, the appellants had not maintained and produced any stock account. The stock account was prepared and produced for verification before the assessing officer on 7.3.95 and the same was checked by the assessing officer. Thus, the accounts checked by the assessing officer contain the entry related to the purchase which is under dispute. Therefore, this cannot be taken a purchase omission. Hence, the addition on this score and equal addition thereon is not sustainable. Regarding the entries in the student note book, the purchase and conversions were found accounted as gisted below:

i) First column refers to the source of purchase

ii) Second column refers to the page No. of the D7 records

iii) Third column refers to the quantity

iv) Fourth column refers to the name of the commodity and the

v) Last column refers to the page of the day book or chittai with date

The analytical study of the table given below suggests that all the entries found in the student note book recovered under D7 slip is found accounted for in the regular day book which was produced before the inspecting officials on 13.10.93. On 13.10.93, the appellants have not produced any stock account. Therefore, the entries in the stock account as checked by the assessing officer on 7.3.95 requires no consideration. As the entries found in the D7 records have gone through the regular day book produced before the inspecting officials on 13.10.93 itself, the entries in the student *note book cannot be taken as omissions and unaccounted transactions. Hence, the estimation based on the D7 slip and the equal addition for probable omission are ordered to be deleted.*

Place	Page in D7	Commodity	Quantity	Cittai Page in the day book
Washim	1 64-67	Orid	90	25/18-5-93
Rajam	3 79-68	Orid	90	190/17-3-93 92-93
Andhra Sada	5 81-50	Orid	100	32/31-5-93
Burnna Tuticorin	7 70-76	Toor	180 Chippam	34/4-6-93
Burnna Tuticorin	9 72-84	Toor	180 Chippam	40/11-7-93
Toor Madras	11 No conversion	Toor	100 Chippam	35/15-6-93
Barsi	13 71-99	Orid	100 Chippam	36/7-6-93
Vijaya-nagaram	15 73-16	Orid	100 Chippam	81/11-10-93 (after inspection)
Sacklight	17 71-17	Orid	90 Chippam	17/14-5-93
Orid	18 38-60 33-74	Orid	94 Chippam	61/5-8-93 (after inspection)
Emari	19 33-84	Toor	180 Chippam	34/4-6-93
Thuvarai	21 48-05	Toor	180 Chippam	35/5-6-93
Emari	23 31-92	Toor	41 Chippam	13/22-4-93
Emari	24 20-02 25 Nil	Toor	29 bags	35/5-6-93

The entries in the D7 slips are found supported by purchase bills and they were accounted for in the day book. Hence it is an accounted purchase and it cannot be taken as any detection by the Department. Therefore, the levy of penalty is also not maintainable. As the suppression is not proved one and as it relates to the year of 1993-94, the appellants are eligible for proportionate relief under penalty. As the day book was not *written upto date when the shop was inspected on 13.10.93 and the conversion account (stock account) was not maintained, the accounts cannot be said as correct and complete. For these defects, certain addition towards the book turnover will meet the end of justice. Thus, the turnover re-fixed as follows:*

Taxable turnover as per accounts	: Rs.8,77,617.00
Add: 2% for defects	: Rs. 17,552.00

Total	: Rs.8,95,169.00 at 4%
Exemptable turnover as per accounts	:Rs.20,70,297.00

Total turnover	Rs.29,65,466.00
Tax due	:Rs. 35,807.00
Tax paid	:Rs. 35,529.00
Balance	:Rs. 278.00

Penalty is refixed at 50% i.e. Rs.139/-

3. The order was sought to be revised under Section 34 of the Act by the first respondent, by issuing a notice dated 10.02.1998. By the impugned order, the order of the Appellate Commissioner was revised by holding that the petitioner had subsequently accounted the transactions and modified the accounts and therefore, there was a case for imposing penalty and also restoring the order of the original authority.

4. Learned counsel for the petitioner has specifically relied on the decision of a Division Bench of this court in the ***State of Tamil Nadu rep. by the Deputy Commissioner of Commercial Taxes, Madras-1 vs. Tvl.Gomraj Metal Wares, Madras*** reported in ***1993 (3) MTCR 82.*** A specific reference was made to paragraph 7, which reads as under:

> *"7. We have carefully considered the submissions of the learned counsel appearing on either side. We are of the view that there is no need for interfering with the formula adopted by the first Appellate Authority which was confirmed also by the Tribunal on the peculiar circumstances of the case. As pointed out by the Tribunal, though certain defects were noticed at the time of inspection with consequent stock variation and deficit, the same was consequently brought into accounts and properly explained and this factual finding is not seriously under challenge before us. If the factual position is as found by the Tribunal, that the assessees, subsequent to the inspection have brought the stock found to have been deficit into the accounts and properly accounted for the same and thought but for the inspection, there was scope to assume that the goods found to be deficit at the time of inspection would not have been brought into account, the claim for actual suppressions could not be said to exist thereafter. Once the goods or stock found to be deficit at the time of inspection, has been brought into account before Assessment the question of working out the actual suppressions does not arise and if at all there is any case for addition, it is only on account of the defects noticed in the accounts and an addition for probable omissions on account of the defective method of accounting, if any, noticed. It is only for such defects noticed and on weighing the nature and gravity of the defects, the first Appellate Authority as well as the*

Tribunal thought fit to hold that an overall addition of 10 per cent to the turnover as disclosed in the books would suffice the ends of justice in this case. In view of the above, we cannot come to the conclusion that the Tribunal has committed any patent error of law or could be said to be guilty of perversity of approach in substituting an overall addition of 10 percent to the books turnover in lieu of the formula adopted by the Assessing Officer. As has been often held it is not that every error of approach that warrants interference in a revision and unless the error if of such a nature involving any patent error of law or perversity of approach, this court will normally hesitate to interfere in a revision before this court. Consequently, in our view, no interference is called for in the above revision. The revision, therefore, fails and shall stand dismissed, but in the circumstances of the case, there shall be no order as to costs."

5. The writ petition is opposed by the learned Additional Government Pleader (Taxes) on the strength of the decision rendered by another Division Bench of this court in the context in ***M/s.Vijay Steels, Chennai vs. The State of Tamil Nadu rep. by the Joint Commissioner (CT), Chennai (East) Division*** reported in ***2016 SCC OnLine Mad 2559.***

6. We have considered the issue. The issue is now covered by the decision of this court in ***Tvl.Gomraj Metal Wares, Madras,*** content of which has been extracted supra rendered in the context of Tamil Nadu General Sales Taxt Act, 1959. Under these circumstances, we do not find

any reason to sustain the impugned order. Therefore, we are inclined to quash the same and allow this writ petition.

7. Accordingly, the impugned proceedings of the first respondent in Ref.MI/22074/96 SMR No.11/225/98 dated 05.07.2005, is quashed and this writ petition is allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

[S.V.N., J.]   [C.S.N., J.]
22.09.2022

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To

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2.The Appellate Assistant Commissioner (CT)
Virudhunagar

3.The Commercial Tax Officer - III
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4.The Government Pleader
High Court, Madras

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