



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.38560 to 38563 of 2005

Sakthi Constructions
Rep. by its Partner
V.R.Nachimuthu
124-B, Narayanaguru Road,
Saibaba Colony, Coimbatore.

...Petitioner in all W.Ps

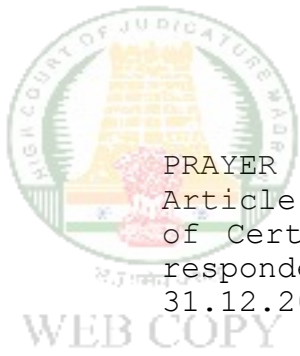
Vs.

- 1.The Commercial Tax Officer,
Saibaba Colony Assessment Circle,
Coimbatore.
- 2.The Appellate Assistant,
Commissioner (C.T.), Coimbatore.
- 3.The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Rep. by its Secretary,
Dr.Balasundaram Road,
Coimbatore-641 018.
- 4.The Deputy Commissioner,
(Commercial Taxes),
Coimbatore.

...Respondents in all W.Ps

PRAYER in W.P.No.38560 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 3rd respondent herein in its CTSA No.270/2001 (1995-96) dated 31.12.2004 and quash the same.

PRAYER in W.P.No.38561 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 3rd respondent herein in its CTSA No.358/2001 (1994-95) dated 31.12.2004 and quash the same.



PRAYER in W.P.No.38562 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 3rd respondent herein in its CTSA No.433/2000 (1992-93) dated 31.12.2004 and quash the same.

PRAYER in W.P.No.38563 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 3rd respondent herein in its CTSA No.88/2001 (1993-94) dated 31.12.2004 and quash the same.

For Petitioner in : Mr.N.Inbarajan
all W.Ps.

For Respondents : Mr.V.Prashanth Kiran
all W.Ps. Government Advocate (Tax)

COMMON ORDER

MOHAMMED SHAFFIQ, J.

We have heard the learned counsel for both sides and also perused the materials placed before us.

2.All the four writ petitions are filed against the order dated 31.12.2004 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore / 3rd respondent herein, wherein, the Tribunal set aside the order of the First Appellate Authority / 2nd respondent and restored the orders of assessment passed by the first respondent insofar as it relates to levy of penalty under section 12(3) (a) of the TNGST Act, 1959.

3.The petitioner is engaged in execution of works contract. During the assessment years from 1992-93 to 1995-96, they had not registered themselves nor collected or paid taxes in respect of their construction activities, on the belief that what was transferred by them was an immovable property and therefore, the same would not fall within the purview of tax under the TNGST Act, 1959. While so, there was an inspection by the Enforcement Wing Officials on 16.12.1997. During the course of the same, the petitioner was informed that their construction activities are liable to tax in terms of Section 3-B and they ought to have registered themselves as dealer under the TNGST Act and filed their returns. Accordingly, the petitioner got themselves registered with effect from 24.12.1997. Thereafter, they filed their consolidated returns for the assessment years viz., from 1992-93 and 1995-96 and paid taxes on the estimated turnovers.



4. Upon scrutiny of the returns filed by the petitioner, the first respondent issued show cause notices based on D3 proposal of the Enforcement Wing officials, to which, the petitioner filed their objections stating that there cannot be any liability for the year 1992-93 inasmuch as there was no transfer of property, since the construction was completed only during the year 1993-94. However, the first respondent levied tax under section 3-B of the TNGST Act on the purchases made by the petitioner in respect of sand, bricks, jelly and timber, besides levying penalty under section 12(3)(a) on the ground that they had not even registered till the time of inspection and they had not filed their returns with a view to evade payment of tax.

5. Admittedly, the petitioner had paid the entire tax and surcharge before the completion of the assessment for the years in question. However, the first respondent levied penalty under section 12(3)(a) on the premise that the petitioner had wilfully failed to get registration and file their returns in order to avoid payment of tax. Hence, the petitioner filed appeals before the second respondent to challenge the orders of assessment.

6. In the appeals, the second respondent / appellate authority, deleted the penalty levied by the assessing officer, after having found that the petitioner had admitted the tax liability, remitted the same and filed their returns for the assessment years 1992-93, 1993-94, 1994-95 and 1995-96 before the final assessment i.e., on 25.03.1998 and the assessing officer erred in finding that the petitioner had not filed their returns and accordingly, allowed the appeals in part.

7. The State carried the matter by way of appeals before the third respondent / Tribunal, which set aside the order of the Appellate Authority and restored the orders of the assessing officer in respect of levy of penalty under section 12(3)(a) of the TNGST Act. The Tribunal arrived at such a conclusion on the premise that the verification of the ledger revealed that the petitioner had not filed returns and they had remitted the taxes only after the closure of the assessment year and upon detection of liability and concealment of the same by the Enforcement Wing Officials and hence, the returns filed by them for the year 1992-93 was not in accordance with the provisions of the Act. In respect of the remaining assessment years, it was found by the Tribunal that there was no return filed by the petitioner and hence, penalty under section 12(3)(a) was warranted. Therefore, the petitioner is before this court with the present writ petitions.

8. As the writ petitions are filed to the limited extent of questioning the legality of levy of penalty under section 12(3)



(a) of the TNGST Act, 1959, we intend to confine ourselves only in respect of the same.

9. The main contention of the learned counsel for the petitioner is that the Tribunal erred in restoring the levy of penalty on the premise that the returns filed by the petitioner were not available in the assessment file and therefore, no returns were filed during the assessment years in question. In the case of non-availability of the returns in the assessment file, the Tribunal, instead of confirming the levy of penalty under section 12(3)(a) of the TNGST Act, ought to have remanded the matter for denovo consideration and ought to have given an opportunity to the petitioner. Therefore, the order passed by the Tribunal is arbitrary, illegal and against the principles of law.

10. We find some substance in the contention so made on the side of the petitioner. The Tribunal before reversing the order of the first appellate authority, ought to have remanded the matter back to the assessing officer to verify, as to whether the submission of the petitioner that the returns have been filed, is factually correct. But, the Tribunal failed to do so. In such circumstances, the order passed by the third respondent / Tribunal, restoring the levy of penalty, cannot be allowed to be sustained.

11. Therefore, we set aside the order of the Tribunal and remand the matter back to the assessing officer to verify whether the petitioner had filed their returns and decide the legality of levy of penalty under section 12(3)(a) of the TNGST Act, 1959, after giving reasonable opportunity of hearing to the petitioner. Such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, all the writ petitions stand disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
Saibaba Colony Assessment Circle,
Coimbatore.



2.The Appellate Assistant,
Commissioner (C.T.),
Coimbatore.

3.The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Dr.Balasundaram Road,
Coimbatore-641 018.

4.The Deputy Commissioner,
(Commercial Taxes),
Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.3208

+1cc to the Special Government Pleader, S.R.No.3843

W.P.Nos.38560 to 38563 of 2005

KV(CO)
KKV/01/02/2022