IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On | 01.11.2022 |
| Pronounced On | 09.01.2023 |

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THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

**W.P.No.25600 of 2007**
and
**M.P.No.1 of 2007**

M/s.G.V.Constructions,
48, Park Avenue, Ground Floor,
Race Course, Coimbatore. ... Petitioner

Vs.

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Coimbatore.

2.The Additional Appellate Assistant
Commissioner (CT),
Coimbatore.

3.The Deputy Commercial Tax Officer,
Trichy Road Circle,
Coimbatore. ... Respondents

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 CTSA.No.194/00, dated 12.12.2006 and quash the same and restore the order of the second respondent in A.P.No.1992/99 dated 13.12.1999.

For Petitioner :: Mr.K.J.Chandran

For R2 & R3 :: Ms.Amirtha Poonkodi Dinakaran
Government Advocate

**O R D E R**

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

This Writ Petition has been filed for a Writ of Certiorari, to call for the records of the first respondent Tamil Nadu Sales Tax Appellate Tribunal [hereinafter referred to as "*Tribunal*"] relating to the impugned order dated 12.12.2006 in Coimbatore Tribunal State Appeal No.194/2000 [hereinafter referred to as "*C.T.S.A.No.194/2000*"] and to restore the order of the second respondent Additional Appellate Assistant Commissioner (CT) [hereinafter referred to as "*Appellate Commissioner*"] dated 13.12.1999 in A.P.No.1992/1999.

2. By the impugned order dated 12.12.2006, the order of the Appellate Commissioner dated 13.12.1999 in A.P.No.1992/1999 allowing the petitioner's appeal was reversed by the Tribunal in C.T.S.A.No.194/2000 filed by the third respondent herein. Relevant portion of the impugned order of the Tribunal reads as under:-

> As seen from the above, the dealer-respondent had filed the very same statement that was filed before the revisional authority to the pre-revision notice that was issued by him before this forum also. In the statement that was filed before us at the time of hearing also disclosed a turnover of Rs.35,00,132/- as taxable turnover and in which the steel forms a part of the turnover i.e the purchase value of Steel was Rs.18,71,302/- to which 8% gross profit was added and the total deemed sale value was worked out to Rs.20,21,006/- and it was taxable at 4% and the tax due was worked out as Rs.80,840/- and it is not known how SC due was also worked out by the dealer-respondent to an extent of Rs.12,126/-. So when the dealer-respondent himself had admitted the liability with reference to the steel that had been purchased in his statement both before the revisional authority and also before us, at the time of hearing it is not known how the Appellate Assistant Commissioner had passed order without taking into consideration the above statement which had been admitted by the dealer-respondent himself to an extent of Rs.35,00,132/-. If the portion relating to Steel is deducted an amount of Rs.14,79,126/- which had been assessed at the time of

original assessment. So when the revision of assessment was taken up by the revisional authority consequent to the inspection that was conducted on 16.12.97, the dealer-respondent himself had estimated the tax liability in respect of the Steel and had arrived at the turnover and filed the statement before the revisional authority which were not taken note of either by the revisional authority nor by the Appellate Assistant Commissioner. So the assessment that was made by the revisional authority on a turnover of Rs.24,32,693/- is restricted to the turnover that was admitted by the dealer-respondent to an extent of Rs. 20,21,006/-. The dispute is only with reference to the rate of tax. If the dealer-respondent had worked out the tax at 4% and left with that 4% then the question of converting the steel into grills would not arise. But he had also worked out the SC due, only because he had converted it into grills. If the working stopped with 4% then the steel that had been purchased had been used as such in the execution of works contract and the liability being admitted by the dealer-respondent could have also been accepted by us. **But when he had worked out the SC due it is clear that the Steel had been converted into grills and used in the execution of works contract.** So the rate of tax alone is under dispute otherwise the turnover disclosed by the dealer-respondent before the revisional authority and also before us at the time time of hearing agrees with one another. So the tax liability has to be fixed with reference to the rate of tax and the rate of tax is at 8%.

In the result, the State appeal is MODIFIED.

3. The dispute in the present Writ Petition pertains to the Assessment

Year 1996-1997. The facts on record indicate that the petitioner had reported a total and taxable turnovers of Rs.62,63,932/- and Rs.35,00,132/- respectively for the aforesaid Assessment Year. A pre-assessment notice was issued to the petitioner on 06.02.1998 seeking to revise the taxable turnover. The dispute pertained to the following five items:-

i. Sand
ii. Bricks
iii. Blue Metal
**iv. Timber Converted**
**v. Steel Converted**

4. The petitioner replied to the pre-assessment notice dated 06.02.1998 vide Letter dated 05.03.1998, wherein, the petitioner requested for waiver of tax on the steel purchased which according to the petitioner was not converted into grills. The third respondent as an assessing authority rejected the request of the petitioner and re-determined the taxable turnover of the petitioner as Rs.39,93,764/- and determined the tax, surcharge and penalty as follows:-

| | |
|---|---|
| Tax due | : Rs.3,75,161/- |
| Paid | : Rs.1,15,067/- |
| Balance | : Rs.2,60,094/- |
| Surcharge due | : Rs.4,400/- |
| Paid | : Rs.3,815/- |
| Balance | : Rs. 585/- |
| Penalty due | : Rs.5,69,342/- |
| Paid | : Nil |
| Balance | : Rs.5,69,342/- |

5. It is the case of the petitioner that there was no conversion of steel purchased, because, the steel was used as such and since the steel was purchased from a registered dealer within the State, it could not be subjected to tax once again. By mistake, it was wrongly declared that steel was purchased from unregistered dealers. It was therefore submitted that the proposal in the pre-assessment notice dated 06.02.1998 as confirmed by the Assessing Officer was incorrect.

6. Aggrieved by the same, the petitioner filed an appeal before the second respondent Appellate Commissioner in A.P.No.1192/1999. The second respondent Appellate Commissioner, by an order dated 13.12.1999, reversed the order of the third respondent with the following observations:-

*4) I heard the arguments of both the representatives and also verified the records produced before me. This is a case of revision made based on the report of the Enforcement Wing Officials without any proper application of mind by the Assessing Authority. The Enforcement Officials have also sent the best judgement proposal without verifying as to whether the appellants have been earlier assessed to tax or not? This D3 proposal is dated 27.1.99 whereas the original order has been passed on 16.3.98 itself. If only the Enforcement Wing Officials had verified the assessment made earlier, they would not have sent this best judgement D3 proposal. The Assessing Authority has also not sent the file relating to original assessment made. He has sent a file containing 42 pages relating to revisional assessment made only. Having a copy of the D3 report the enclosure for the same, the statement recorded at the time of inspection and the revision notice issued by him and the orders passed by him. He has also not given valid reasoning to over-rule the objections.*

*5) There is no dispute regarding the turnover originally assessed and the turnover proposed to be assessed by the Enforcement Officials relating to sand, bricks, blue metal etc. The dispute relates the steel grills and timber. The Enforcement Officials have sent D3 proposals proposing to assess iron steel purchases as deemed sales of steel grills for Rs.24,32,693/-. Even to a common man it is ascertainable that compared to the total volume of business done during this year there could not have been purchase and deemed sales of steel grill for this value. The Assessing Authority had proposed to treat the steel purchase as sales of grills in the original order itself. Subsequently on receipt of reply and* *details he had accepted that there was no conversion of steel into any other commodity, that the purchase of steel had been made from registered dealers within the State, that it was used as such etc. He had also recorded that he had verified the purchase bills for the purchase of steel. It is strange that the same Assessing Authority has taken an entirely different stand in the revisional order as per the directions of the Enforcement Officials who have also not verified the accounts at all and arrived at the conclusion of conversion of this steel into some other commodity. In view of the above, I hold that the assessment made on the deemed sale value of steel grills for Rs.24,32,693/- is not proper. I set aside the same and allow the appeal relating to this issue.*

*6) Regarding timber purchased and converted, the Assessing Authority in his original order has accepted the turnover reported by the appellants and assessed the same at 8% and 11%. The appellants have added a gross profit of 8% towards this conversion. They have claimed that they have used their own carpenters to convert the timber into doors and windows. Hence they have added 8% gross profit to the timber purchase value and shown the same as taxable turnover. This is not acceptable. The appellants must prove with the records the actual cooly paid to the carpenters, and the fact that they have included the cooly charges paid to the carpenters to the purchase value and added gross profit of 8% thereon to arrive at the taxable turnover. They have not produced any records before me specifying the actual cooly charges paid to the carpenters. In view of the above I hold that addition 30% towards conversion and gross profit is proper. I sustain the assessment made for Rs.2,87,957/- at 8% and Rs.2,13,999/- at 11%. I dismiss the appeal relating to this issue.*

*7) In the original order passed, the Assessing Officer has found that they have paid tax in excess. He has adjusted the tax payment to the tax due. He has levied penalty under Section 12(3)(c) for the balated submission of returns only. However in the revised order passed he has levied penalty under Section 12(3)(b). The amount of penalty levied is also incorrect. If revised orders were passed as stated earlier, I hold that there would be only excess payment in the case on hand. Hence, I hold that the penalty levied under Section 12(3) (b) is not proper. I set aside the same.*

*To conclude the appeal is MODIFIED.*

7. As mentioned above, the order of the second respondent Appellate Commissioner dated 13.12.1999 in A.P.No.1192/1999 was reversed by the first respondent Tribunal vide impugned order 12.12.2006 in C.T.S.A.No.194 of 2000. Operative portion of impugned order has been extracted above.

8. It is submitted that the impugned order is unsustainable as the demand is based on the D-3 proposal forwarded by the Enforcement Wing. It is further submitted that the Revising of Assessment by the third respondent was therefore unsustainable.

9. We have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the second and third respondents. We have perused the impugned order of the Tribunal and the orders of the third and the second respondents.

10. The petitioner was engaged in civil contract work. Thus, the petitioner would have been liable to tax under Section 3-B of the Tamil Nadu General Sales Tax Act, 1959 as a works contractor. Section 3-B(2)(b) of the Tamil Nadu General Sales Tax Act, 1959 as it stood then read as under:-

> **Section 3-B. Levy of tax on the transfer of goods involved in works contract**.-
>
> (1) Notwithstanding anything contained in sub-sections (2-A), (2-B), (3), (4), (7) and (8) of section 3, or section 7-A, but subject to the other provisions of this Act including the provisions of sub-section (1) of section 3, every dealer referred to in item (vi) of clause (g) of section (2) shall pay, for each year, a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned in sub-section (2) of section 3 or, as

> the case may be, in section 4.
>
> *Explanation*.- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each such item of work.
>
> (2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall, on and from the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer:-
>
> (a) ........
>
> (b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract in the same form in which such goods were purchased;

11. The facts on record indicate that the petitioner had declared the total of Rs.62,63,932/- and taxable turnover of Rs.35,00,132/- in his return. However, the taxable turnover was re-determined as Rs.39,93,764/- by the Assessing Officer. The Assessing Officer namely, the third respondent has treated the Steel purchased by the petitioner as sale of Steel Grills liable to tax under Section 3-B of the TNGST Act, 1959.

12. As per Section 3-B(2)(b) of the Tamil Nadu General Sales Tax Act, 1959, the taxable turnover of a dealer for the transfer of property involved in the execution of works contract shall be arrived after deducting the value of goods used in the execution of works contract which were purchased from a registered dealer and were liable to pay tax at the rate specified in the First Schedule or the Second Schedule of the Act.

13. The tax on the Steel purchased by the petitioner was determined at 8% alleging that the petitioner had converted the Steel purchased into Grill. The amount confirmed by the third respondent was reversed by the second respondent. Later, by the impugned order, the Tribunal has confirmed the same.

14. We are of the view that the Tribunal has not committed any error while reversing the decision of the second respondent Appellate Assistant Commissioner as the petitioner did not produce any documents to substantiate that the steel that was purchased from a registered dealer within the State of Tamil Nadu was not used in the execution of works contract.

15. That apart, this Court is not really concerned with the decision under Article 226 of the Constitution of India. Rather, it is concerned only with the decision making process as held in **H.B.Gandhi, Excise and Taxation Officer – cum – Assessing Authority, Karnal and others** Vs. **M/s.Gopi Nath & Sons and others**, 1992 Supp (2) SCC 312. We do not find any mistakes or perversity in the decision making process.

16. Further, the scope for interference / judicial review of an order of Tribunal is very limited. Unless the order suffers from violation of principle of natural justice or is found to be *ex-facie perverse* or *arbitrary*, the Writ Petition ought not to have been entertained. The impugned order passed by the Tribunal does not suffer from any infirmity and cannot be set aside.

17. In the light of the above, we dismiss this Writ Petition. No cost. Consequently, connected Miscellaneous Petition is closed.

**S.V.N., J** **C.S.N., J.**

09.01.2023

Internet : Yes / No

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To

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Pre-Delivery Order
in
W.P.No.25600 of 2007
and M.P.No.1 of 2007

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