IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2023

Coram:

THE HONOURALE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.(Revision Petition) No.48 of 2022

The State of Tamil Nadu,
Rep. by its Joint Commissioner (CT),
Vellore Division,
Vellore. .. Petitioner

Vs.

Tvl.Arunai Motors,
131/22-564/1,
Polur. .. Respondent

Tax Case (Revision Petition) filed under Section 60 of the Tamil Nadu Value Added Tax Act, 2006, against the order dated 09.08.2018 passed in S.T.A.No.376 of 2018 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For petitioner : Mr.M.Venkateswaran, Spl.G.P.

ORDER

This Tax Case (Revision Petition) is filed challenging the order of the Sales Tax Appellate Tribunal, Chennai, only insofar as the deletion of penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act.

2. The assessment year relates to 2015-2016. The respondent/assessee is engaged in the business of trade in tractors and is a registered dealer on the file of the Commercial Tax Officer, Polur Assessment Circle. There was an inspection of the assessee's place of business on 24.09.2015 and it was found that there was stock variation of tractors, apart from the raw materials. The explanation offered by the respondent-assessee was rejected in the assessment made confirming the proposal made by the Enforcement Wing, including that of levy of penalty. The matter was carried in appeal before the appellate authority, and the appeal filed by the respondent-assessee was allowed. The State of Tamil Nadu preferred further appeal to the Sales Tax Appellate Tribunal, Chennai.

3. We are only concerned with the portion of the order of the Tamil Nadu Sales Tax Appellate Tribunal relating to penalty under Section 27 of the Tamil Nadu Value Added Tax Act. While dealing with the allegation of suppression of the tractors, the Tribunal had found that there is no possibility of suppression of tractors. The relevant portion of the impugned order of the Tribunal reads as under:

> "... The correct taxable turnover from 01.09.2015 to 24.09.2015 is Rs.98,62,453/- only. Above all the appellants are having tractor sales. The tractors sold by them has to be get registered under Motor Vehicles Act. Without sale it could not get registered. The appellant has sent certain vehicles for trial run which were covered by delivery challans. This aspect was not considered by the inspecting officer. Since the appellant were maintained stock account for tractors, the inspecting officer should have verified the stock with reference to stock books in numbers and also recorded their finding for the stock variation. But it was not done. The statement recorded at the time of inspection is silent about whether the delivery challan were maintained or not. In the

> absence of specific findings on tractors stock difference the explanation of the appellant and argument of the Advocate cannot be ignored. ...."

4. It is further found by the Tribunal that there is no finding of sales suppression of tractors and on the above premise, the Tribunal proceeded to hold that the penalty is not leviable and thereby, the Tribunal affirmed the order of the appellate authority insofar as the levy of penalty is concerned.

5. We find that the above finding relating to suppression of tractors is a question of fact and it cannot be interfered with by this Court, unless shown to be perverse, which is not the case herein.

6. Secondly, the Tribunal's order does not warrant interference insofar as it finds that in the absence of specific finding of wilfull suppression, the levy of penalty may not be justified.

7. In view of the above, we find no reason to interfere with any of the

reasons set out by the Tribunal while confirming the order of the appellate authority deleting levy of penalty under Section 27 of the TNVAT Act imposed on the respondent-assessee.

8. The Tax Case (Revision) Petition is dismissed. There shall be no order as to costs.

(S.V.N., J) (M.S.Q., J)
02.01.2023

Speaking Order: Yes/no
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To

1. The Registrar,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
High Court Buildings,
Chennai-600 104.

2. State of Tamil Nadu,
Rep. by the Joint Commissioner (CT),
Vellore Division, Vellore.

S.VAIDYANATHAN, J

and

MOHAMMED SHAFFIQ, J

cs

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