IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case No.440 of 2023

The State of Tamil Nadu
Rep.by the Joint Commissioner (ST)
Salem Division, Salem. ... Appellant

Vs.

Tvl.Pandian Tubes
No.279/1, Sathy Road
Erode. ... Respondent

Tax Case filed under Section 60 of the TNVAT Act, 2006 against the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 22.09.2021 passed in C.T.S.A.No.51/2017.

For Petitioner : Mr.V.Prashanth Kiran
Government Advocate

For Respondent : Mr.B.Raveendran

O R D E R

(Order of the Court was made by **R.SURESH KUMAR,J.**)

This Tax Case Revision has been filed against the order passed by the Sales Tax Appellate Tribunal, Additional Bench, Coimbatore in C.T.S.A.No.51 of 2017 on 22.09.2021.

2. As against the order of assessment passed by the assessing authority dated 30.12.2005, the respondent assessee filed appeal before the Appellate Deputy Commissioner which was decided in favour of the assessee by reversing / setting aside the assessment order, as against which the Revenue preferred further appeal before the Sales Tax Appellate Tribunal in C.T.S.A.No.51 of 2017, where also the Revenue became unsuccessful. That is how this Tax Case Revision has been directed at the instance of the Revenue.

3. Mr.V.Prashanth Kiran, learned Government Advocate raises the contention that no documents / books of accounts or ledgers have been produced to substantiate the stand of the assessee before the assessing authority. However, some of the documents seems to have been produced before the first appellate authority and those documents had been accepted by the first appellate authority contrary to Section 63(2) of the TNVAT Act, 2006. In this context, the learned counsel for the Revenue lays emphasis that under Section 63(2) of the Act, if at all the Appellate Deputy Commissioner or the Appellate Joint Commissioner has to receive any documents first time in evidence on behalf of any dealer in appeal, such accounts or records or registers or documents cannot be accepted is the general rule unless for reasons to be recorded in writing. If the Appellate Deputy Commissioner or Appellate Joint Commissioner considers that such accounts / registers / records / documents are

genuine and that the failure to produce the same before the assessing officer for reasons beyond the control of the dealer, it should have been stated in writing before accepting the document for the first time by the appellate authority, since that is the import of Section 63(2) of the Act. Contrary to the provisions those documents since have been accepted by the first appellate authority, the order passed by the first appellate authority ought to have been reversed by the Tribunal when appeal was preferred by the Revenue before the Sales Tax Appellate Tribunal.

4. Learned Government Advocate would also submit that, even though that point was specifically raised on behalf of the Revenue before the Tribunal, without considering the same in proper perspective, the Tribunal has brushed aside the same by taking into account the written arguments of the assessee and since these points have not been considered concurrently both by the first appellate authority and the Tribunal, on that ground itself this Tax Case Revision is to be allowed in favour of the Revenue, he contended.

5. We have also heard Mr.B.Raveendran, learned counsel for the respondent assessee.

6. We have gone through the order passed by the appellate Tribunal, where it has been factually found by the first appellate authority that the

necessary records like purchase bills were produced before the assessing authority for verification, but to the surprise, in the order the learned assessing authority, contrary to the facts, recorded a finding that the dealer has not produced any evidence. After recording the same, the appellate authority has further recorded that the contention of the Department representative that the dealer had not come forward to produce the records showing the nature of the goods involved in the alleged purchases and the tax rate charged by the seller is also not acceptable, since the facts and figures given by the appellant dealer already before the assessing authority were conveniently ignored and the proposals were found to be confirmed. Therefore, the department representative had also equally made a patent error and sailed in the same boat by supporting the contention of the assessing authority.

7. This was the factual finding given by the first appellate authority, where they categorically found that those documents which were necessarily to be filed by the dealer have already been filed before the assessing authority. In this context, the recording of the assessing authority in the original assessment order also to be taken note of where the assessing authority has recorded that the reply filed by the dealer was carefully examined and considered. The dealer has filed Trading Profit and Loss Account, which revealed certain facts.

8. In these circumstances, when appeal was preferred before the Tribunal, where also the same point was raised on behalf of the Revenue, which in fact was made by the dealer / counsel by filing a written argument stating that the charges that the evidences were produced before the first appellate authority for the first time, was denied. In order to substantiate their contention, they have stated that the assessing authority himself at pages 2 to 7 of the assessment order gave a finding that they have filed reconciliation statement. Therefore, what was produced before the first appellate authority were only copy of the records and not more than that. This was the finding given in Para 6 of the first appellate authority. Thereafter, in para 7, the Tribunal has also given a finding stating that the Tribunal also examined the assessment records and it revealed that they have filed reconciliation statement it was reproduced by the assessing authority in his order at page 2.

9. All these factual findings were given by the first appellate authority as well as the Tribunal. There is no whisper to establish that the accounts / records / documents were first time produced before the first appellate authority and therefore it is hit by Section 63(2) of the Act as contended by the learned counsel for the Revenue. Since this is the main ground urged on behalf of the Revenue before the first appellate authority as well as the Tribunal and also before this Court, for which there has been absolutely no scope, we are not in a

position to accept such contention raised on behalf of the Revenue. Resultantly, this appeal fails and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (C.S.N.,J.)
22.11.2024

Index : Yes/No
Internet : Yes/No
KST

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and
C.SARAVANAN, J.

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