IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.16032 of 2008
and
MP.No.1 of 2008

M/s.Hotel Gowrishankar (P) Ltd.,
Represented by its Director – Mr.K.Rengasamy Naidu,
No.47, East Arokiaswami Road,
Coimbatore. ... Petitioner

Vs.

1.The Secretary,
Sales Tax Appellate Tribunal,
Additional Bench,
Coimbatore.

2.The Commercial Tax Officer,
R.S.Puram (East) Assessment Circle,
Coimbatore. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the 1st respondent – Appellate Tribunal passed in CTSA No.321/1999 dated

28.02.2008 pertaining to the assessment year TNGST 1995-96, quash the same as illegal and contrary to the provisions of law.

For Petitioner	: Mrs.R.Hemalatha
For R1	: Tribunal
For R2	: Mrs.K.Vasanthamala Government Advocate

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J.)

The petitioner is an assessee under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short Act) and challenges additions made to its turnover pursuant to an inspection conducted on 14.05.1996.

2.An order of assessment dated 16.10.1998 was framed and one of the additions related to a slip, slip No:10, that was found in the course of inspection. That slip revealed collections of labour charges for the period 1995 – 1996 of a sum of Rs.21.12 lakhs (approx). To the aforesaid amount, the assessing authority adds 30% as cost of goods supplied and 70% towards cost of materials, arriving at a total of Rs.80,97,429/- (80.97 lakhs approx) towards estimated sales suppression of kitchenware. Penalty under Section 12(3)(b) of the Act at 150% of the alleged suppression was also levied.

3.The petitioner challenged the assessment and was successful in first appeal. The appellate authority concluded that there was not a scrap of information found in the course of inspection that would support the addition of suppression of turnover whereas, in second appeal by the revenue, the aforesaid finding was reversed by the Sales Tax Appellate Tribunal (STAT/Tribunal) was of the view that the records supported such an addition.

4.We have heard learned counsel.

5.The order of assessment does not contain reference to any material that would justify the estimates made by the assessing authority. As rightly pointed out by the Appellate Assistant Commissioner, the department could, at best, have brought to tax, the labour charges, as an estimate or the turnover from sale of utensils. In the absence of any incriminating materials, the conclusion of the authority that the petitioner had engaged in fabrication of kitchenware utensils and furniture, is arbitrary baseless and devoid of any merits.

6.The penalty relating to the addition is quashed and the impugned order, to the extent discussed above is set aside. This writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is also closed.

[A.S.M., J]   [G.A.M., J]
01.10.2024

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Index	:	Yes
Speaking Order	:	Yes
Neutral Citation	:	Yes

To

1.The Secretary,
Sales Tax Appellate Tribunal,
Additional Bench,
Coimbatore.

2.The Commercial Tax Officer,
R.S.Puram (East) Assessment Circle,
Coimbatore.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

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