IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2024

CORAM

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

W.P.No.4381 of 2008
& M.P.No.1 of 2008

Tvl.Lakshmi Mills,
Rep. by its Proprietor
P.Jaganathan,
143/A, Pernampet Road, Gudiyatham,
Vellore District.

... Petitioner

Vs

1. The Tamil Nadu Sales Tax Appellate Tribunal (MB)
   rep. by its Secretary,
   2nd Floor, City Civil Court Buildings,
   High Court Campus, Chennai – 600 104.

2. The Appellate Assistant Commissioner (CT)
   Fort Round, Vellore – 632 001.

3. The Deputy Commercial Tax Officer,
   Gudiyatham Assessment Circle,
   Gudiyatham, Vellore District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in

T.A.No.439/2003 dated 14.09.2007 and quash the same as illegal, arbitrary and against the provision of the Act.

For Petitioner : Mr.S.Kaarthick
for Mr.A.Chandrasekaran

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

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

Heard Mr.S.Kaarthick, learned counsel on behalf of Mr.Chandrasekaran, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate for the respondents.

2. The petitioner challenges an order of the Tamil Nadu Sales Tax Appellate Tribunal (STAT/Tribunal) dated 14.09.2007 relating to the period 1983-84, for which assessment was made under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act').

3. The bone of contention relates to the claim of second sales of groundnut kernels and pods by the petitioner. Initially an assessment was made on 03.05.1986 rejecting the petitioners claim of second sales (we do not have the benefit of this order). As against the same, an appeal has been filed before the Appellate Assistant Commissioner (AAC), which came to be allowed by way of remand on 30.01.1987.

4. The AAC was of the view that the enquiry made at the first instance had not

been detailed and the matter should be re-visited by the Assessing Authority. The AAC places the burden on the Revenue to prove that the first sellers were not actually in existence or that the sellers had not issued sales bills, which is contrary to the mandate under Section 10 of the Act, which places the onus on the person making the claim to establish such claim in accordance with law.

5. The assessment was completed by an order dated 31.03.2000, again adverse to the petitioner. The authority has proceeded yet again to reject the claim of second sales against which the petitioner filed a first appeal. The assessing authority, vide proceedings dated 31.03.2000 makes reference to Section 10 of the Act and states that the fact that the sellers were not in existence is established beyond doubt, as the assessee/petitioner was unable to prove their existence.

6. An appeal was filed yet again and by order dated 25.07.2002, a detailed examination was carried out by the AAC. The addition to turnover on this account was a sum of Rs.72,97,708/-. For the first time, at the stage of second appeal, the petitioner produced registration numbers in relation to 22 registered dealers and on verification of the same, the appellate authority accepted purchases to an extent of Rs.51,87,794/-. For the balance turnover of a sum of Rs.21,09,914/-, the petitioner was unable to produce any particulars whatsoever and hence the assessment made at the rate of 3% on the aforesaid amount was confirmed.

7. The Revenue has accepted the findings of the AAC with regard to the purchase turnover of a sum of Rs.51,87,794/-. Hence, nothing remains as far as this matter is concerned. As against the confirmation of taxability of Rs.21,09,914/-, the petitioner went on second appeal and the findings of the AAC to the effect that there was no material to establish such purchases has been confirmed by the Tribunal.

8. Both authorities have rightly referred to the burden of establishing such purchases that falls on the assessee in terms of Section 10 of the Act. In light of the concurrent findings by the first and second appellate authorities and the admitted position that the assessee really had no material to establish purchases made for a sum of Rs.21,09,914/-, we see no merit in this appeal or any reason to intervene or disturb the concurrent findings of the first and second appellate authorities.

9. There are two other additions of a sum of Rs.60,200/- for probable omission and equal time addition. No submissions have been made in this regard and the learned counsel for the petitioner does not very seriously contest the same.

10. In fine, the order of the Tribunal dated 14.09.2007 is confirmed and this Writ Petition is dismissed. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (G.A.M.,J)

13.08.2024

sl
Index:Yes/No
Speaking order
Neutral Citation: Yes

To

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AND
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