IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.No.130 of 2018

The State of Tamil Nadu,
Represented by the Joint Commissioner of Comml. Taxes,
Tiruchirappalli Division,
Tiruchirappali. ... Petitioner

-Vs-

Tvl.Kaliswari Agencies,
No.4, Reddipalayam Road,
Thanjavur. ... Respondent

PRAYER : Tax Case Revision filed under Section 60(1) of the VAT Act, 2006, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) at Chennai dated 20.04.2017 in T.A.No.101 of 2015 and C.O.P.No.85 of 2015.

For Petitioner	:	Mr.G.Nanmaran Special Government Pleader
For Respondent	:	Mr.P.R.Kumar

ORDER

(Order of the Court was made by **C.SARAVANAN, J**)

The Commercial Tax Department is before this Court in this tax case revision against the order dated 20.04.2017 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) at Chennai in T.A.No.101 of 2015 and C.O.P.No.85 of 2015.

2. The facts are not in dispute. The respondent / assessee had earlier suffered adverse assessment order in the hands of the Assessing Officer on 31.10.2014 pursuant to revision notice dated 18.08.2014. The assessment order was later revised on 10.03.2015. Aggrieved by the same, the respondent / assessee had filed an appeal before the Appellate Deputy Commissioner in Appeal No.VAT 57/2015 which came to be dismissed by an order dated 14.08.2015. Aggrieved by the same, the respondent / assessee had filed T.A.No.101 of 2015 and C.O.P.No.85 of 2015, which stands partly allowed by the impugned order.

3. Relevant portion of the impugned order of the Tribunal reads as follows:

"8. It is not in dispute that the appellant had exercised their option to pay tax under compounded rate in terms of section 3(4) of the TNVAT Act relating to the assessment year 2012-13 and so they filed monthly returns in Form-K reporting a total and taxable turnover of Rs.29,10,910/- for the year 2012-13 and accordingly, the appellants were deemed to have been assessed to tax under session 22(2) of the TNVAT Act, 2006 by the Assessing Officer accepting the total and taxable turnover of Rs.29,10,910/-. Later, on further verification of appellant's vendor Annexure-II of monthly returns along with Annexure-I of the monthly returns filed by the appellant, it revealed that they had effected purchases of cement from local registered dealers to a tune of Rs.58.07.510/- whereas they had reported only a sales turnover of Rs.29,10,910/-. Thus, it seems that there was a huge difference between the purchase turnover reported by the appellant and the sales turnover reported by the other end dealers. Therefore, the Assessing Officer had estimated the sales turnover of cement at Rs.66,78,636/- taking into account the entire purchases of Rs.58,07,510/- based on the turnovers reported in Annexure-II of the other end dealers and besides adding 15% towards gross profit and accordingly, the Assessing Officer had assessed to tax at 0.5% on the first sales turnover of

Rs.50,00,000/- and at 14.5% on the remaining turnover of Rs.16,78,636/- . A perusal of the impugned assessment order dated 31.10.2014, it is seen that the appellants had effected purchases of cement to a tune of Rs.58,07,510/- as per the details of Annexure-II of monthly returns filed by other end dealers / vendors whereas they had reported only a sales turnover of Rs.29,10,930/- which is not proportionate to the purchases effected by them. Therefore, the revision of assessment was made by the Assessing Officer assuming that the entire purchases effected by the appellant were sold out locally. A perusal of the trading and profit & loss account filed for the assessment year 2012-13 by us, it revealed that the opening stock value of cement was declared as Rs.1,05,200/- purchases turnover was Rs.66,49,600/- sales turnover was Rs.29,10,910/- and closing stock value was Rs.38,43,890/-. Further, the income tax statement filed for the assessment year 2013-14 (financial year 2012-13) also indicated the same set of facts as found in profit and loss account. Similarly, the trading and profit and loss account filed for the subsequent assessment year 2013-14 indicated that the opening stock value of cement was Rs.38,43,890/- purchase turnover was Rs.41,80,670/- sales turnover was Rs.38,34,855/- and closing stock value was Rs.41,89,705/- and further, the income tax statement filed by the appellant for the disputed year also confirms *the same set of facts. It is to be pointed out that the Assessing Officer did not consider the aspect of value of closing stock held on 31.03.2013 with the appellant was Rs.38,48,890/-. Obviously, it is not in dispute that either the inspecting officials or the Assessing Officer has not at all pointed out that the closing at all pointed out that the closing stock held on 31.03.2013 did not actually exists at their business premises and the entire purchases made by them were sold out and no stocks remain lying with them. Above all, the Assessing Officer has not all pointed out any sales omissions outside the purview of accounts inferring over valuation of closing stock. In fact, the sales turnover reported for the year 2013-14 was accepted by the dealer by passing a deemed assessment order. A perusal of the impugned assessment order dated 10.03.2015 by us, it revealed that the order passed by the Assessing Officer is not a speaking order. The reasons for not accepting the turnover has not properly discussed and examined by the Assessing Officer along with connected records. He simply revised the assessment on the footing that the entire closing stock held on 31.03.2012 were sold out locally. In the instant case, reassessment was made on the basis of entire closing stock sold out alone without looking into the account books is bad in law. The action of the Assessing Officer is based on an assumption without any examination of books or materials evidence* *on record or finding any mistakes in the figures adopted in trading and profit and loss account. The contention of the Assessing Officer that the entire closing stock held on 31.03.2012 would have been treated as sold out locally and it cannot be accepted in the absence of material evidence on record. The method adopted and finding given by lower authority in relation to closing stock is found to be not correct. The Assessing Officer has simply rejected the closing stock value and has taken the entire closing stock was sold out during the same period is erroneous in law and not based on any valid records. Regarding this, the Assessing Officer did not conduct any investigation or verification into the reasonableness of the closing stock held with the appellant and it is not supported by any material evidence on record. In the absence of any valid material evidence on record, we find that the order of the First Appellate Authority sustaining the revision of assessment along with levy of penalty made under section 27(3) OF TNVAT Act,2006 is found to be not correct and therefore we hereby order to set aside the order of the First Appellate Authority as not sustainable. Accordingly, the point is answered.*

9.COP 85/2015

In the Cross Objection Petition filed by the respondent, the respondent raised certain points like accommodation/ godown space not sufficient and other *technical defects which were not at all considered by the Assessing Officer while passing the impugned assessment order and then the Cross Objection Petition filed by the respondent is nothing but counter to the appeal filed by the dealer and the issues raised in the appeal filed by the dealer are considered and answered in the foregoing paragraphs and therefore, the Cross Objection Petition filed by the respondent is closed.*

In fine, the Tribunal appeal stands Allowed and Cross Objection Petition stands closed."

4. The case of the Revenue appears to be that the assessee has wrongly availed the benefit of Section 3(4) of the TNVAT Act, 2006. That apart, the closing stock shown by the assessee was Rs.38,43,890/- which works out to nearly 14,236 numbers of cement bags which was highly impossible for the assessee to store 14,236 bags of cement in a godown measuring to an extent of 4449 sq.ft.

5. In our view, the order does not call for any interference. In case, the closing balance was Rs.38,43,890/- for 14,236 bags, it would have been brought to tax during the succeeding financial year, i.e., assessment year 2013-14. In case, it escaped from assessment, it was open for the Department to

initiate proceedings to recover tax. We find no infirmity in the impugned order of the Appellate Tribunal. Therefore, this tax case revision is liable to be dismissed.

6. Accordingly, this Tax Case Revision is dismissed. No costs.

(R.S.K., J.) **(C.S.N., J.)**
22.08.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Joint Commissioner of Comml. Taxes,
   Tiruchirappalli Division,
   Tiruchirappali.

2. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench),
   Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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