IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM :

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

Tax Case (Revision) Petition No.48 of 2024

The State of Tamil Nadu
represented by
The Joint Commissioner (ST),
Salem Division, Salem.

.... Petitioner

vs

Tvl.Fidle Specialities (P) Ltd.,
No.84/1, Kudumiyan Theru,
Ellampillai Main Road,
Sivatapuram, Salem - 637 707.

.... Respondent

Prayer : Revision filed under Section 60 of the Tamil Nadu Value Added TAx Act, 2006 against order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA No.604/2022 dated 05.12.2022.

For Petitioner : Mr.G.Nanmaran
Special Government Pleader

ORDER

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

The Revenue challenges an order of the Tamil Nadu Sales Tax Appellate Tribunal dated 05.12.2022 relating to assessment year 2013-14. The substantial questions of law raised are as follows:

> *1. Whether the order of the learned Tribunal in deleting the penalty stands vitiated in as much as it fails to take into account the relevant and has taken into account the factors that are wholly irrelevant in deciding whether penalty is warranted in terms of Section 27(3) of the TNVAT Act, 2006?*
>
> *2. Whether the learned Tribunal has erred in deleting the penalty by affirming the findings of the 1st appellate authority which has proceeded to hold that penalty under section 27(3) of the TNVAT Act consequent to the assessment orders even though there could be suppression in non-disclosing the turnover and paying the tax along with the return?*
>
> *3. Whether the learned tribunal ought to have seen that penalty under Section 27(3) of the TNVAT Act 2006 gets attracted if there is an escapement of turnover which is due to wilful nondisclosure of assessable turnover by the dealer?*
>
> *4. Whether the learned tribunal ought to have seen that the Respondent/ Assesse had suppressed taxable turnover which was detected only during the course of inspection and consequent to which, best judgment was made by making equal time addition towards probable suppression / omission?*
>
> *5. Whether the learned tribunal erred in finding that since the tax due on suppressed turnover has been paid before the completion of the reassessment, levy of penalty is unwarranted, the above finding is contrary to the express provision contained in Section 27(3) which only requires the*

Assessing Officer to enquire whether there is escapement of turnover due to willful nondisclosure and on being satisfied of the above condition, Penalty would get attracted and the quantum would be in terms of the slab prescribed under Section 27(3) (a to c) of the TNVAT Act 2006.

6. Whether the learned tribunal ought to have seen that payment of taxes before the order of assessment in respect of turnover that has been wilfully not disclosed would not have any bearing in determining the levy and the quantum of penalty?

2. Mr.Nanmaran, learned Special Government Pleader would point out that the issue arising for resolution has been decided by this Court in *State of Tamil Nadu and another V. Everest Industries Limited* ((2022) 103 GSTR 10) and in *Commissioner of Commercial Taxes and another V. Tvl. Bharath Traders* (W.A.(MD) No.1613 of 2021 etc. batch dated 01.12.2022) ,adverse to the revenue.

3. He would also point out that as against the aforesaid orders, the revenue has filed Special Leave Petitions bearing SLP Nos.5815 of 2023 and 6031 of 2024 respectively before the Supreme Court, wherein the Supreme Court is stated to have granted interim orders staying the refund alone.

4. In light of the aforesaid, following the decisions in *Everest Industries Limited* and *Bharath Traders* (supra), this Tax Case

(Revision) is dismissed and the substantial questions answered in favour of the assessee. There shall be a stay of the refund to which the assessee

Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

is entitled, in the event an appeal is filed in time by the Department challenging the present order.

[A.S.M., J] [G.A.M., J]
14.11.2024

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

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