IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

CORAM :

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

T.C.No.44 of 2024

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

Vs.

Tvl. Fidle Specialties (P) Ltd.
No.84/1, Kudumiyan Theru
Ellamillai Main Road
Sivatapuram, Salem - 637707. .. Respondent

Prayer: Petition filed under Section 60 of the TNVAT Act, 2006, to set aside the order dated 05.12.2022 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA N.600 of 2022 and confirm the order passed by the Assistant Commissioner (ST), Suramangalam dated 30.01.2018 vide TIN 33662802786/2008-09.

For the Petitioner : Mr.G.Nanmaran
Special Government Pleader

ORDER

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

This tax case revision has been filed on the following substantial questions of law:-

"1. Whether the order of the learned Tribunal in deleting the penalty stands vitiated inasmuch as it fails to take into account the relevant and has taken into account the facts 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 willful nondisclosure of assessable turnover by the dealer?

4. Whether the learned Tribunal ought to have seen that the respondent/assessee 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 to 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 willfully not disclosed would not have any bearing in determining the levy and the quantum of penalty?"

2. When the matter is taken up for admission, *Mr.G.Nanmaran*, learned Special Government Pleader appearing for the State/Revenue would submit that similar issues have already been decided by this Court in a number of cases, where it was decided against the Revenue.

3. Learned Special Government Pleader relied upon two

Division Bench decisions of this Court, out of which, this Bench has made a decision in the case of ***The State of Tamil Nadu vs. Tvl. Marks Engineering Works***[1] vide order dated 05.08.2024, where, we have passed the following orders:-

> *"2. State being the petitioner represented by Mr.Haja Nazimudeen, Additional Advocate General~I would urge that, the issue is covered by a decision of the Coordinate Bench of this Court in the matter of* ***State of Tamil Nadu and Another ~vs~ Everest Industries Limited (2022) 103 GSTR 10****. Insofar as the law which has been settled by the Division Bench in Paragraph 126 of the judgment to state that, by virtue of the amendment that has been made by omitting Section 19(5)(c) of the Act, whether the intention of the Legislature was clear in allowing the Input Tax Credit for the inter~state sale to registered and unregistered dealers with retrospective effect was the question still to be answered.*
>
> *3. Learned Additional Advocate General has relied upon the Special Leave Petitions arising out of the aforesaid Division Bench order referred to supra in S.L.P.(D) No.5815 of 2023, where the Hon'ble Supreme Court, after having entertained the SLPs, has granted an interim order of stay of*

1 *T.C.No.21 of 2024*

refund alone pursuant to the impugned order of the High Court until further orders.

*4. Though it was canvassed by the learned Additional Advocate General to show such indulgence by this Court, we are not impressed with the same. The reason being that, the law since has been declared by the Division Bench as stated in **State of Tamil Nadu and Another ~vs~ Everest Industries Limited (2022) 103 GSTR 10**, as cited supra, we respectfully follow the same. Hence, this Tax Case fails and accordingly it is dismissed. No costs."*

4. In view of the same, this tax case revision is decided in favour of the dealer assessee and against the Revenue. Hence, this tax case revision stands dismissed. There shall be no order as to costs.

(R.S.K., J.)　　　　(C.S.N, J)
11.11.2024

Neutral Citation:Yes/No

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<u>R. SURESH KUMAR, J.</u>
<u>AND</u>
<u>C. SARAVANAN, J.</u>

(drm)

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