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T.C.No.67 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

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

T.C.No.67 of 2024

The State of Tamil Nadu
Represented by the Joint Commissioner (CT)
Salem (Now Erode Division).

... Appellant

-Vs-

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

... Respondent

PRAYER : Tax Case Revision filed under Section 60 of TNVAT Act, 2006 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 05.12.2022 passed in CTSA.No.603 of 2022.

For Appellant : 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 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA No.605 of 2022 dated 05.12.2022, raising the following substantial questions of law:



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- i. *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?*
- ii. *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?*
- iii. *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 non-disclosure of assessable turnover by the dealer?*
- iv. *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?*
- v. *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?

- vi. *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. In respect of the very same impugned order, already a Tax Case Revision in T.C.No.50 of 2024 has been filed, which was decided in favour of the assessee / dealer and against the Revenue on 19.11.2024, wherein we have passed the following order

" 2. When the matter is taken up for hearing, Mr.G.Nanmaran, learned Special Government Pleader appearing for the petitioner / Revenue would fairly submit that, the issue raised in this tax case revision has already been settled in number of cases and the present Bench by order dated 05.08.2024 in T.C.No.21 of 2024 in the matter of **State of Tamil Nadu, Represented by its Joint Commissioner Vs. Tvl.Marks Engineering Works** has already dismissed the said tax case revision by following the decision in the matter of the **State of Tamil Nadu and another Vs. M/s.Everest Industries Limited** reported in (2022) 103 **GSTR 10**. We have passed the said order on 05.08.2024 to the following effect:



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"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 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."



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3. In view of the above, where the questions of law raised in this tax case revision since have already been concluded in favour of the assessee / dealer and against the Revenue, the present tax case revision also has to face the similar consequence.

4. Resultantly, this Tax Case Revision is liable to be dismissed, accordingly, it is dismissed. However, there shall be no order as to costs."

3. In view of the above, this Tax Case Revision is also liable to be dismissed. Accordingly, this Tax Case Revision is dismissed. No costs. The substantial questions of law raised in this revision are answered in favour of the assessee and against the Revenue.

(R.S.K.,J.) (C.S.N.,J.)
28.11.2024

Index : Yes/No

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