IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

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

T.C.Nos.28 and 29 of 2022

Tvl.Monisha Enterprises,
Represented by its Proprietor C.Subramani,
S/o.S.N.Chinnusamy,
No.1/520, Kumaravelipalayam,
Thodipatti Periyamanali,
Trichendgode Taluk,
Namakkal - 637 212. ... Petitioner
in both T.Cs

-Vs-

The State of Tamil Nadu,
Represented by the Joint Commissioner (ST),
Salem Division,
Salem. ... Respondent
in both T.Cs

COMMON PRAYER : Tax Case Revisions filed under Section 60 (1) of TNVAT Act, 2006 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18 dated 26.04.2022 passed in C.T.S.A.Nos.15 and 16 of 2021.

For Petitioner
in both T.Cs : Ms.L.Sweety

For Respondent
in both T.Cs : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

COMMON ORDER

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

The petitioner is before this Court in these tax case revisions against the impugned order dated 26.04.2022 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18 in C.T.S.A.Nos.15 and 16 of 2021.

2. The dispute in these cases relate to assessment years 2015-16 and 2016-17. It appears that the petitioner had registered itself as an assessee under the provisions of the Tamil Nadu Value Added Tax Act, 2006 but has failed to file return in time. The Department inspected the premises of the petitioner on 15.07.2016 where they found that out of 72 machineries which were imported by the petitioner from China, 30 were used for their own purposes and the remaining 42 were sold to third parties during these assessment years. The petitioner purportedly filed a return on 31.07.2016 and thereafter paid the tax on the sales effected by the petitioner dealer during these assessment years. This

has culminated in the assessment order dated 29.12.2017 wherein penalty was imposed under Section 22(5) of the TNVAT Act, 2006. Aggrieved by the same, the petitioner filed an appeal before the Appellate Commissioner. The Appellate Commissioner, by an order dated 18.03.2021 in VAT.AP.Nos.23 and 24 of 2018, has allowed the petitioner's appeals by placing reliance of the decision of the Hon'ble Supreme Court in the case of ***S.G.Jeyarajnadar & Sons Vs. State of Madras*** reported in ***AIR 1971 SCC 2405*** which decision stands reversed by the impugned order.

3. The learned counsel for the petitioner would submit that the petitioner has paid the tax immediately after the inspection for the assessment years and therefore, there was no question of any best judgment assessment involved in the present case and consequently imposition of penalty under Section 22(5) of the TNVAT Act was unjustified. The learned counsel therefore submits that the impugned order of the Tribunal reversing the order of the Appellate Commissioner is liable to be set aside. The learned counsel has relied upon the decision of the Division Bench of this Court in the case of ***Ram Sun Fabi Techs Vs. State of Tamil Nadu*** reported in ***2008 SCC OnLine Mad 1257*** wherein this Court had interfered with the imposition of penalty under Section 16 of TNGST Act, 1959.

4. The learned counsel for the respondent on the other hand would submit that there is no merits in the present case. He has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Rajasthan Spinning and Waving Mills*** reported in ***(2009) 13 SCC 448*** and the decision of Division Bench of this Court in the case of the ***M/s.Gurusamy Agencies Vs. The Deputy Commercial Tax Officer*** in ***W.A.No.1237 of 2017***.

5. We have considered the arguments advanced by the learned counsel appearing for the petitioner and the respondent and have also perused the provisions of Tamil Nadu Value Added Tax Act, 2006 and Tamil Nadu Value Added Tax Rules, 2007.

6. The petitioner cannot escape from the penal consequence under Section 22(5) of the TNVAT Act, 2006 merely because the tax was paid after inspection and before the assessment order dated 29.12.2017 was passed under Section 22(5) of the TNVAT Act, 2006. The question of filing a revised return on 31.07.2016 was also not available in view of the Rule 7(9) of the TNVAT Rules, 2007. As per Rule 7(9) of the TNVAT Rules, 2007, only if a return was filed and the dealer finds any omission or error, he can file a revised return rectifying the omission or error within a period of six months from the last day

of the relevant period to which the return relates. Revised return cannot be filed if the tax payable is unearthed on account of an inspection or audit or receipt of any other information or evidence by the assessing authority. Rule 7(9) of the TNVAT Rules, 2007 is extracted hereunder:

> *"If a dealer having filed a return, finds any omission or error therein, other than as a result of an inspection or audit or receipt of any other information or evidence by the assessing authority, he shall file a revised return rectifying the omission or error within a period of six months from the last day of the relevant period to which the return relates. Where, as a result of such revised return, the tax payable by the dealer increases, the dealer shall furnish along with such revised return, proof of payment of tax and interest due thereon under sub-section(4) of Section 42 of the Act."*

7. Consequently, the question of self assessment on the so called return filed on 31.07.2016 cannot be countenanced. The provision of Section 22(5) of the TNVAT Act, 2006 is clear. The authorities have no discretion to either drop penalty where tax has been evaded. Even if no best judgment has been made, the tax payable by the petitioner after evasion was noticed during inspection has been admitted. The fact remains that the tax was not paid in time and tax has

been paid pursuant to the inspection on 15.07.2016. The return that was purportedly filed on 31.07.2016 is not a return recognized under the provisions of TNVAT Rules, 2007. It was not return in the eye of law. The decision rendered by the Hon'ble Supreme Court in the context of Section 16 of TNGST Act, 1959 which was followed by the Division Bench of this Court in **Ram Sun Fabi Techs Case** cited *supra* cannot be applied to the facts of these cases as the provisions are different. On the other hand, the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Rajasthan Spinning and Weaving Mills*** referred above clarified the decision in the ***Union of India & others Vs. Dharamendra Textile Processors & others*** is clear that the penalty is impossible. It although rendered in the context of Section 11-AC of the Central Excise Act, 1944, the ratio is applied to the facts of the case. The Hon'ble Supreme Court observed as under:

> *"34. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11-AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the Authority concerned would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under Sub-section (2) of Section 11-A. That is*

what Dharmendra Textile decides. It must, however, be made clear that what is stated above in regard to the decision in Dharmendra Textile is only insofar as Section 11-AC is concerned. We make no observations (as a matter of fact there is no occasion for it!) with regard to the several other statutory provisions that came up for consideration in that decision."

8. In view of the above, these Tax Case Revisions are dismissed. No costs.

(R.S.K., J.) **(C.S.N., J.)**
17.10.2024

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

To

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

2. The Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench),
   Coimbatore-18.

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

vji

T.C.Nos.28 and 29 of 2022

17.10.2024