BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

T.C.(MD).No.31 of 2009

The State of Tamil Nadu represented by
The Deputy Commissioner of Commercial Taxes,
Tiruchirappalli Division,
Tiruchirappalli. .. Petitioner

Vs.

Vijay Cements (P) Limited,
Ariyalur. .. Respondent

PRAYER: Tax Case (Revision) Petition filed under Section 38(1) of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Madurai in MTA.Nos. 896/01, 897/01 and 899/01 dated 13.02.2004.

For Petitioner : Mr.A.K.Manikkam

For Respondent : No appearance

ORDER

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The State being aggrieved by the order passed by the Sales Tax Appellate Tribunal in MTA.Nos.896/01, 897/01 and 899/01 dated 13.02.2004, is before this Court challenging the order on the ground that the Tribunal has failed to note that the revision of the sales tax liability of the respondent was based on the field inspection, search of the business premises and residence and also recovery of incriminating records such as, electricity consumption and purchase of fly ash from NLC for manufacture of cements.

2. The case of the appellant is that the respondent Company, involved in manufacturing portland cement, was assessed for tax for the year 1994-95 and it was found that there was suppression of the turnover. Therefore, a penalty of Rs.8,05,176/- was imposed under Section 16(2) of the TNGST Act, 1959 for the taxable turnover of Rs.37,65,834/-. Similarly, for the year 1995-96, penalty of Rs.55,45,190/- was imposed for the taxable turnover of Rs.10,36,82,712/- and for the year 1996-97, the taxable turnover was fixed

as Rs.10,26,08,752/- and penalty of Rs.66,66,855/- was imposed by the Assessing Officer under Section 12(3)(b) of the TNGST Act. Aggrieved by the said assessment, the respondent/dealer preferred appeals before the Appellate Authority, namely, Appellate Assistant Commissioner (CT), Trichy for the above assessment years. The Appellate Authority, vide order dated 14.08.2001, remanded the matter back for re-assessment. Being aggrieved, the respondent/dealer preferred Second Appeals before the Tamil Nadu Sales Tax Appellate Tribunal, which were allowed in MTA.Nos. 896/01, 897/01 and 899/01 preferred under the TNGST Act. Further, the connected appeals filed under the Central Sales Tax Act were partly modified and partly remanded. Being aggrieved by the order passed by the Tribunal in MTA.Nos.896/01, 897/01 and 899/01, the present revision is filed as tax case.

3. The grounds raised in the revision petition are primarily on the point that the Tribunal failed to take note of the fact that the turnover declared by the dealer is grossly disproportionate to the power consumption and purchase of raw materials. The entries available regarding transportation of the goods from the factory gate to the stockists, the

purchase of fly ash from NLC and the use of electricity for production clearly discloses higher production and turnover. But the Tribunal grossly ignored those documents and heavily relied upon the assessment made under the Central Excise Act, which is not a final order or binding on the Sales Tax Department.

4. This Court, on perusing the records and the submissions, finds that the assessment for the year escaped turnover fixed by the Assessing Authority based on the documents collected during the inspection and searching of the premises, though available with the Central Excise Authorities also, they have thought fit that the turnover as declared by the dealer is acceptable. There must be some consistency between the tax authorities, whether it is State or Central. There cannot be two different total turnover of a manufacturer. The rate of tax or taxable goods may differ.

5. The Tribunal relying upon the judgment of the Hon'ble Supreme Court in the case of ***Ashwinkumar K.Patel Vs. Upendra J.Patel and others reported in (1999) 3 SCC 161***, had gone into the merits of the case instead of accepting the remand order passed by the First Appellate Authority and

this Court cannot find fault with the said decision of the Tribunal, since, when the matter was taken up for consideration by the Tribunal, nearly eight years have lapsed from the assessment year. The Department has relied upon the documents collected from the stockists of the trader. The Tribunal, while considering those documents, has clarified that those dealers are not exclusive stockists for the trader, namely, Vijay Cements. Having been authorised for other manufacturers also, the turnover of the stockists as a whole cannot be mulcted on the respondent. This reasoning is also acceptable and it is not perverse.

6. To controvert the material relied upon by the respondent/dealer and accepted by the Tribunal, there is no material produced by the Department. Therefore, this Court finds no reason to interfere with the order of the Tribunal. Hence, the tax case is dismissed. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
10.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

Lm

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