BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P(MD)Nos.247 and 248 of 2010
and
M.P(MD)Nos.2 and 2 of 2010 & WMP(MD)No.4671 of 2024

Tvl.Lakshmi Agencies,
No.2/13, Vatti Pillar Koil Street,
Kumbakonam,
Tanjore District. ... Petitioner in both WPs

vs.

1. The Secretary to the Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Chairman,
Tamil Nadu Sale Tax Tribunal (Main Branch),
Chennai-600 104.

3. The Appellate Assistant Commissioner (CT),
Tanjore, Tanjore District.

4. The Deputy Commercial Tax Officer III,
Kumbakonam,
Tanjore District.

5. The Deputy Commissioner,
Commercial Taxes,
Trichy Division,
Trichy. ... Respondents in both appeals

Prayer in W.P(MD)No.247 of 2010 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order of the 2nd respondent in STA No.296 of 2005 dated 12.11.2009 confirming the Revisional Assessment order of 4th Respondent in TNGST 3980504/98-99, dated 06.05.2002, and quash the same.

Prayer in W.P(MD)No.248 of 2010 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order of the 2nd respondent in STA No.295 of 2005 dated 12.11.2009 confirming the Revisional Assessment order of 4th Respondent in TNGST 3980504/97-98, dated 06.05.2002, and quash the same.

For Petitioner : Mr.C.K.M.Appaji
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

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

The writ petitioner is an Agency/Dealer in Kadappa, Granite and Glazed Tiles, having business at Kumbakonam, which was assessed for the years 1997-98 and 1998-99. Originally, the taxable turnover was Rs.7,63,869/- and Rs.7,36,394/-, under the Tamil Nadu General Sales Tax Act, 1959. Thereafter, a show cause notice was issued by the respondent / revenue, on the ground that they have received some report from their counterpart at Rajasthan, from where, under two such transactions, the materials had been purchased and the 'C' Form produced by the petitioner/dealer in respect of two such transactions during the relevant year differs with the 'C' Form produced by the seller at Rajasthan, which since has been revealed by the team of Rajasthan, based on which, the said show cause notice had been issued, whereby, the following has been stated:-

> "*In the reference second cited, certain extracts gathered from the counterpart Department of State of Rajasthan by the officials of InterState Investigation Cell, Chennai were received in this office for cross check and the transactions are as below.*
>
> *1. Name of the consignor i.e., Seller at Rajasthan Tvl. Mithralal Granite Jalore, Bill. No/ Dated: 004/ 15.5.98. Value Rs.84,188.00 Commodity – Marbles. Against the above purchase you have issued your 'C' form bearing No.695092.*
>
> *2. Name of the consignor: Tvl. Mithralal Granite, Jalore, Bill No / Date/ 21/8.2.1999. Value Rs.1,24,310.00 Commodity : Marble.*
>
> *Against the above purchase you have produced your 'C' form bearing No.566980, as evident from the extracts received.*
>
> *Accordingly your accounts ware rechecked with reference to the above two 'C' forms and the results are as follows.*
>
> *<u>TRANSACTION:</u>*
>
> *You have purchased caddppa Stones from Tvl. Shanthi, menerals, Kodur, Andhrpradesh in Bill No.2, Dated: 7.4.1998 and the value of purchase including 4% CST is Rs.8,736.00. Against this purchase you have issued your 'C' form in question i.e. Sl.No. 695092. Hence the transaction differs in all aspects.*
>
> *<u>Transaction No.2</u>*
>
> *You have purchased granite from Tvl. Mahadev Granite Industries, Jalore, in Bill No.21/Dated:8.2.99 and the bill value including 4 % CST is Rs.1,29,282.00. Against this purchase 'C' form bearing No. 566980 has been issued by you. In this transaction, the name of the consignor fully differs.*
>
> *As the above two transaction of purchases are totally different from what has been reported in you regular books of accounts. I am of the opinion that the counterfoil of 'C' form retained by you has to be*

ignored and your assessment for the year 1998-99 has to be revised under Section 16(1)(a) of TNGST Act' 59 for assessment of escaped turnover on Best Judgment Basis as proposed below."

2. Even though reply had been given which had not been accepted by the revenue. Therefore, the Deputy Commercial Tax Officer, i.e., the Assessing Authority, by orders dated 06.05.2002, confirmed the proposed revision notice under Section 16(1)(a) of the Act and penalty under Section 16(2) of the TNGST Act, 1959.

3. As against the said assessment orders, the petitioner/dealer/assessee had filed appeals before the Appellate Assistant Commissioner, who allowed the same by orders dated 05.03.2003.

4. As against the said order passed by the Appellate Assistant Commissioner, the State/revenue filed STA.Nos.295 and 296 of 2005, before the Tamil Nadu Sales Tax Appellate Tribual, Main Bench at Chennai, which was decided by orders dated 12.11.2009, under which, the Tribunal has reversed the orders passed by the Appellate Assistant Commissioner and allowed the said appeals filed by the State/revenue. Aggrieved over the said orders passed by the Appellate Assistant Commissioner, the assessee/dealer has preferred these writ petitions.

5. Heard Mr.C.K.M.Appaji, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents.

6. It is the definite case of the writ petitioner/dealer that, insofar as the claim that has been made by producing the 'C' Form in respect of the two transactions is concerned, it is the genuine transaction, where original 'C' Form had been produced by the petitioner/dealer.

7. However, if at all any agency or a seller in Rajasthan, claimed tax concession by way of producing the 'C' Form in duplicate, which is the 'C' Form of the petitioner, in no way, the petitioner would be responsible for making such a claim, as he has never involved in any such transaction of purchasing the goods from the Rajasthan dealer and therefore, their claim cannot be put against the writ petitioner.

8. In this context, the finding given by the Tribunal reads thus:-

> "*The main ground on which Appellate Assistant Commissioner has set aside the assessment was that the Assessing Officer had not mentioned the details of the sale bill of Tvl.Mithralal Granite, Jalore and also the details of mode of transport, including lorry number etc in the order and by relying only on the extract of ISIC, the assessment was revised and a turnover of Rs.5,09,612/- was assessed as suppression.*

Therefore, the learned Appellate Assistant Commissioner had set aside the assessment on the turnover of Rs.5,09,612/-. It is very clear from the extract received from ISIC that two purchases were effected by using a single C form (i.e) by using the duplicate of C Form for one purchae and by using the original of C form for another purchase. This could not be possible without the knowledge of the respondent/assessee. Taking into account the facts of the issue and considering the investigation done by the ISIC, we are of the considered view that the stand taken by the learned first appellate authority is not a sustainable one. Hence, we set aside the order of the Appellate Assistant Commissioner for the assessment year 1998-99 and restore the order of the Assessing Officer in its entirety.

14) As regards penalty, the Assessing Officer had levied a penalty of Rs.1,52,883/- under Section 16(2) of the Tamil Nadu General Sales Tax Act, 1959 at 150% of the tax due by holding that the respondent had wilfully not disclosed the purchases effected from Tvl.Mithralal Graite, Jalore. However, the learned Appellate Assistant Commissioner had deleted the entire penalty on the ground that the suppression was not proved by the Assessing Officer. We have held above to restore the assessment on the turnover of Rs.5,09,612/- and the respondent/assessee in this case had wilfully not disclosed the assessable turnover which warrants penalty. Therefore, we are of the view that the order of the learned Appellate Assistant Commissioner in deleting the penalty is not in order. Hence, we restore the penalty levied by the Assessing Officer. Accordingly, the points are answered against the respondent/assessee.''

9. If we look at the finding given by the Tribunal, the Tribunal has come to such a conclusion to reverse the orders passed by the Appellate Assistant Commissioner, by giving a finding that, it is very clear from the extract received from ISIC that, two purchases were effected by using a single 'C' Form i.e., by using the duplicate of 'C' Form for one purchase and by using

the original of 'C' Form for another purchase. This could not be possible without the knowledge of the petitioner/assessee.

10. In order to verify the same, we called for the records from the revenue and in the records also after having been perused, we find that there has been no basis to make a claim that the duplicate 'C' Form has been used for making any such claim on behalf of the writ petitioner or by the writ petitioner.

11. Merely because some dealer at the other end i.e., at Rajasthan, made such a claim by using any duplicate 'C' Form, without verifying the same of the books of accounts and the records of the present assessee/dealer, the revenue could not have come to such a conclusion by merely accepting the report received from the counterpart at Rajasthan.

12. When it is the specific case of the writ petitioner/dealer that, except the two transactions, for which, the original 'C' Form had been produced and it was claimed by the petitioner/dealer, no other transaction had ever been effected in the said two names from Rajasthan as has been claimed by the said seller, that issue should have been considered and to be verified as to whether the duplicate 'C' Form having been shown for gaining any thing on the part of the petitioner.

13. In the absence of any such transaction and in the absence of any such claim that has been made either directly by the petitioner or on behalf of the petitioner, merely based on the report that has been received from the Rajasthan counterpart, the revenue since has come forward to re-assess the same by way of review under Section 16 of the Act and imposed the penalty through the order passed by the assessing authority, is without any basis.

14. This, in fact, has been considered by the Appellate Assistant Commissioner and he had set aside the assessment on the ground that the Assessing Officer had not mentioned the details of the sale bill of the particular sale and also the details of the mode of transport, including the Lorry number etc., in the order and by relying only on the extract of ISIC since the assessment was revised to the turnover as has been indicated, was assessed as a suppression. Therefore, the Appellate Assistant Commissioner has set aside the same, of course, rightly.

15. However, the Tribunal in its order, has simply made an observation saying that it is very clear from the extract received from the ISIC that, two purchases were effected by using the single 'C' Form one by using duplicate and one by the original.

16. For giving such a finding by the Tribunal, no materials are available in the files of the revenue. When that being so, such a finding given by the Tribunal is liable to be interefered with.

17. Resultantly, the order passed by the Tribunal is to be set aside and accordingly, set aside, by restoring the order passed by the Appellate Assistant Commissioner. Hence, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) **(G.A.M., J.)**

10.04.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The District Collector,
Madurai, Madurai District.

2. The Tahsildar,
Vadipatti Taluk,
Madurai District.

3. The Taluk Surveyor,
Vadipatti Taluk,
Madurai District.

4. The Village Administrative Officer,
Kallanai Village, Vadipatti Taluk,
Madurai District.

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

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