BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

T.C.(MD)No.4 of 2017

Tvl.R.K.Gopalram & Co.,
188, Palace Road,
Madurai - 1 : Petitioner

Vs.

The State of Tamil Nadu
rep. by the Commercial Tax Officer,
Mahal Assessment Circle,
Madurai. : Respondent

PRAYER: Tax Case (Revision) is filed under Section 38 of the TNGST Act, 1959 read with Rule 30 of the TNGST Rules, 1959 to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 16.11.2016 passed in Madurai Tribunal Appeal No.143/2004.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.R.Sureshkumar
Addl. Govt. Pleader

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ORDER

(Order of the Court was delivered by **P.VELMURUGAN, J.**)

The revision petitioner is a dealer in Electrical & Hardware Goods and etc., and an assessee on the file of the respondent. For the assessment year 1996-97 (TNGST), the petitioner was assessed on a total and taxable turnover of Rs.47,83,438/- and Rs.36,19,732/- respectively allowing exemption on a turnover of Rs.11,63,706/- under the original order of assessment passed, after verifying the account books of the petitioner, by the respondent. Subsequently, the respondent issued a pre-revision notice dated 30.03.2002, proposing to revise the said order of assessment and assess the petitioner's purchase of M.S.Washers of Rs.9,02,526/- from one Thiru Jeyanthi Industries, Madurai (RC.5160362) and plain Box of Rs.78,450/- from one G.M.Wood Works, Nagercoil, (RC.6141270) on the ground that the said Thiru Jeyanti Industries, from whom M.S.Washers to the tune of Rs.9,02,526/- were purchased, did not pay taxes and the report regarding G.M.Wood Works, Nagarcoil, from their Assessing Officer is still awaited and therefore, the petitioner was liable to pay tax on the resultant sales at appropriate rate with surcharge and penalty, for which, the petitioner sent a detailed reply contending that their aforesaid purchases are with proper bills and their subsequent sales to the Tamil Nadu

Electricity Board are only second sales, not liable to tax. The commodities M.S.Washers and Plain Boxes are fall under the First Schedule and taxable at the point of 'First Sale' and therefore, the point of levy cannot be shifted on the petitioner who admittedly made a second and subsequent sale which is not liable to tax as per the scheme of the Act and the petitioner cannot be held liable to pay tax simply because their sellers have not paid the taxes or they are not existing. Inspite of the objection filed by the petitioner, the respondent passed a revised order of assessment in TNGST.5140029/96-97 dated 07.02.2003 confirming the proposals in the notice. Due to that, the petitioner was mulcted with a liability of tax of Rs.1,02,529/-, surcharge of Rs.7,936/-, Additional Sales Tax of Rs.9,919/- and penalty of Rs.1,80,575/-. Aggrieved over the same, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT), Madurai (South) in A.P.49/2003. The Appellate Authority without properly considering the facts of the case and the settled position of law, confirmed the levy of tax, surcharge and additional tax, however, deleted the penalty, vide its order in A.P.49/2003 dated 30.03.2004. Against which, the petitioner preferred further appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai - 20 in Madurai Tribunal Appeal No. 143/2004. The Appellate Tribunal without properly appreciating the facts of the case, dismissed the appeal filed by the petitioner by its order dated

16.11.2016. Therefore, the petitioner has filed the present revision before this Court.

2.While admitting this case, this Court has formulated the following substantial question of law:-

> "Whether the Appellate Tribunal is correct in confirming the levy of tax, surcharge and penalty on the petitioner on the ground that the petitioner's sellers, registered dealers under the TNGST Act, who are liable to pay tax under the TNGST Act, had not actually paid the tax?

3.The learned counsel for the petitioner would submit that the petitioner is a dealer in Electrical & Hardware Goods and etc., and an assessee on the file of the respondent. For the assessment year 1996-97 (TNGST), the petitioner was assessed on a total and taxable turnover of Rs.47,83,438/- and Rs.36,19,732/- respectively allowing exemption on a turnover of Rs.11,63,706/- vide original order of assessment passed, after verifying the account books of the petitioner, by the respondent in TNGST 5140029/96-97. Subsequently, the petitioner was received a pre-revision notice dated 30.03.2002, proposing to revise the said order of assessment and assess the petitioner's purchase of

M.S.Washers of Rs.9,02,526/- from one Thiru.Jeyanthi Industries, Madurai (RC.5160362) and Plain Box of Rs.78,450/- from one G.M.Wood Works, Nagercoil, (RC.6141270) on the ground that the said Thiru.Jeyanthi Industries from whom M.S.Washers to the tune of Rs.9,02,526/- were purchased, have not paid taxes and the report regarding G.M.Wood Works, Nagarcoil, from their Assessing Officer, is still awaited. Therefore, the petitioner is liable to pay tax on the resultant sales at appropriate rate with surcharge and penalty. For the above said notice, the petitioner filed an objection. However, the assessing authority without considering the objection, passed a revised order of assessment confirming the proposals in the notice. Challenging the same, the petitioner filed an appeal before the Appellate Assistant Commissioner (CT), Madurai (South) in A.P.49/2003. However, the Appellate Authority without properly considering the facts of the case and the settled position of law, confirmed the levy of tax, surcharge and additional tax, however, deleted the penalty, vide its order in A.P.49/2003 dated 30.03.2004. Hence, the petitioner preferred further appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai - 20 in Madurai Tribunal Appeal No.143/2004. The Appellate Tribunal without properly appreciating the facts of the case, dismissed the appeal filed by the petitioner by its order dated 16.11.2016. Hence, the petitioner has come before this Court.

4. The learned Additional Government Pleader appearing for the respondent supported the order of the respondent and pleaded to dismiss the revision.

5. Heard both sides and perused the materials available on records.

6. On a perusal of the order of the Assessing Authority, dated 07.02.2003 shows that the Assessing Authority vide order dated 07.02.2003 stated that the dealers were not informed that the alleged claim of second sales of M.S.Washers and Plain Box on a turnover of Rs.11,63,706/- is not in order since the alleged sellers are not in existence and no proof for sufferance of tax at the earlier stage was adduced and it was proposed to reject the claim of exemption and to levy tax with corresponding consequential levies and proportionate penalty. Challenging the same, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT) Madurai (South). The Appellate Assistant Commissioner in para 4 of the order dated 30.03.2004 stated that the assessing officer has cross verified the purchases of goods worth Rs.87,450/- from Tvl. G.M.Wooden Words [R.C.No:6141270]. The Deputy Commercial Tax Officer, Nagercoil in his order dated 07.03.2002 has informed the assessing officer that the place mentioned in the reference lies in the

jurisdiction of the Deputy Commercial Tax Officer, Nagercoil Town. Therefore, the assessing officer addressed the Deputy Commercial Tax Officer, Nagercoil Town that there are no dealers doing business in his area under the name and style of G.M.Wooden Works. From these references, it has become certain that the seller is a non-existing dealer. Under these circumstances, the assessing officer in his revised proceedings TNGST No.5140029/96-97 dated 07.02.2003 has assessed the appellants as follows on the turnover on which he has granted exemption in his original orders dated 31.12.1997. The relevant portion of the order of the Appellate Assistant Commissioner is reproduced hereunder:

> ".........In his cross reference No. App-II/41/2001-02 dated 24.12.2001 the assessing officer has cross verified the purchases of goods worth Rs.87,450/- from Tvl. G.M.Wooden Words [R.C.No:6141270], Eathamozhi Road, Nagercoil. The Deputy Commercial Tax Officer, Nagercoil in his App-1/21/2001-02 dated 7.3.2002 has informed the assessing officer that the place mentioned in the reference lies in the jurisdiction of the Deputy Commercial Tax Officer, Nagercoil Town. Therefore, the assessing officer addressed the Deputy Commercial Tax Officer, Nagercoil Town, who in officer that there are no dealers doing business in his area under the name and style of G.M.Wooden Works. From these references, it has become certain that the seller is a non-existing dealer. Under these circumstances, the assessing officer in his revised

proceedings TNGST No.5140029/96-97 dated 07.02.2003 has assessed the appellants as follows on the turnover on which he has granted exemption in his original orders dated 31.12.1997..."

7. On a reading of the above said observation and also the copy of the notice furnished by the petitioner shows that in para 2 of the notice, it is stated as follows:-

"2. To verify the correctness of the exemption allowed on II sales, the assessing officers of your sellers were addressed to verify the accounts of suppliers and to report whether the sales were accounted for and suffered tax at the hands of the sellers. But verification report is still awaited in respect of serial No.2 as accounts are not produced to the respective assessing officer.

Name of the sellers	Bill No. & Date	Commodity	Value
1) Thiru Jeyanthi Industries (RC.5160362)	601 to 615 dt. 22.4.96 to 04.10.96	M.S.Washer	Rs.9,02,526/-
2) G.M.Wood Works, Nagercoil, (RC 6141270)	21 to 92 dt.28.5.96 to 20.3.97	Plain Box	Rs.78,450/-

In respect of S.No.1, as the alleged sellers have not paid tax, it is proposed to levy tax on the resultant sales turning from out of Rs.9,02,526/- at the appropriate rate surcharge and penalty."

8. On a reading of the original notice issued by the assessing authority shows that reports are awaiting, but subsequently, on seeing the order of the appellate authority shows that the report regarding G.M.Wooden Words alone and not regarding the Jeyanthi Industries. The order of the appellate authority shows that the purchaser G.M.Wooden Words was not existing, however, the order of the appellate authority does not say anything about Jeyanthi Industries. Without any application of mind, the appellant authority confirmed the order of the assessing authority. Though the petitioner filed the appeal before the appellate Tribunal, the Tribunal also without giving any reason simply discussed about the time limits and dismissed the appeal filed by the assessee and confirmed the order of the appellate authority. Therefore, a perusal of the notice issued by the assessing officer dated 28.03.2002 and the order passed by the appellate authority dated 07.02.2003 shows that G.M. Wooden Words, Nagercoil is not existing, however, the order is silent about the Jeyanthi Industries. Therefore, considering the materials and the facts and circumstances of the case, this Court finds that the order of the appellate authority is liable to be set aside to the extent of Jeyanthi Industries.

9. In view of the above, this Tax Case is partly allowed. The order passed by the Appellate Tribunal in respect of the Jeyanthi Industries is set aside. The assessing authority is directed to do the exercise in the manner known to law only regarding G.M.Wooden Words alone. No costs.

[P.V.,J.] **[K.K.R.K.,J.]**

skn **24.10.2024**

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

To

The Sales Tax Appellate Tribunal (Additional Bench),
Madurai.

P.VELMURUGAN, J

and

K.K.RAMAKRISHNAN, J.

skn

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