IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

Tax Case (Revision) No.11 of 2025
and C.M.P.No.4508 of 2025

Mahalakshmi Hardware & Electrical
No.83-24-2A, Trichy Main Road
Villupuram. .. Petitioner

Vs

State of Tamil Nadu
rep. by the Joint Commissioner (CT)
Vellore Division, Vellore. .. Respondent

PRAYER: Revision under Section 60(1) of the TNVAT Act, 2006 to revise the order dated 9.12.2024 passed in S.T.A.No.495 of 2018, by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.

For Petitioner(s): Mr.Adithya Reddy

For Respondent(s): Mr.C.Harsha Raj
Special Government Pleader

ORDER
(Order of the Court was made by the Hon'ble Chief Justice)

By consent, the revision is taken up for hearing.

2. The tax case revision impugns an order dated 9.12.2024 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai [Tribunal].

3. One Mohan carries on business as sole proprietor in the name and style of Mahalakshmi Hardwares & Electrical. Petitioner trades in hardware and electricals. Petitioner is an assessee on the file of the Commercial Tax Officer, Villupuram-I Assessment Circle.

4. On 28.12.2015, 29.12.2015 and 30.12.2015, there was an inspection by the officials of the Enforcement Wing of the Commercial Tax Department. In the course of inspection, there was an allegation of stock difference and, consequently, an estimation of sales suppression to the tune of Rs.79,42,350/- was made and the tax effect was Rs.5,48,022/-.

5. Subsequently, the Assessing Authority passed an assessment order dated 3.12.2016 for the assessment year 2015-2016 confirming the demand on a turnover of Rs.79,42,350/- and the tax effect of Rs.5,48,022/-. There was an equal addition to the tune of Rs.84,05,096/- to the tax effect of Rs.5,71,159/-; and penalty of Rs.8,56,739/- was imposed under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act].

6. Petitioner filed a first appeal before the Appellate Deputy Commissioner (CT), Cuddalore. The Appellate Authority set aside the sale suppression, equal addition and penalty under Section 27(3) of the TNVAT Act, but made an ad-hoc addition of Rs.20,00,000/- to the book turnover in order to meet the ends of justice.

7. The department filed a second appeal before the Tribunal. The Tribunal confirmed the order of the Assessing Authority and set aside the order passed by the Appellate Authority. It is against this order dated 9.12.2024 of the Tribunal that petitioner has approached this court on

various grounds.

8. Petitioner's counsel, though has not questioned the stock difference allegation and, consequently, the estimation of sale suppression to the tune of Rs.79,42,350/-, has questioned the equal addition to the tune of Rs.84,05,096/- and the imposition of penalty under Section 27(3) of the TNVAT Act of Rs.8,56,739/-.

9. It is petitioner's case that the equal addition of alleged suppressed turnover is purely a guess work. Shri Reddy submitted that there was no basis for making equal amount addition and it was only an estimate and not in accordance with law. According to Shri Reddy, equal addition was unwarranted because it was for probable omission/suppression.

10. On the issue of penalty, Shri Reddy submitted that before the issuance of the show cause notice amounts have been paid and, therefore, there was no willful suppression.

11. Shri Harsha Raj, per contra, submitted that the equal addition is justified and it is based on valid material. He submitted that a factual finding has been given that assessee had failed to maintain correct accounts and even the stock found was in excess on the date of inspection. Shri Harsha Raj also submitted that only after the search was made did the assessee make available documents and details and, therefore, the equal addition is justified.

12. As regards penalty, Shri Harsha Raj submitted that the judgments where it is held that when the tax has been paid before issuance of show cause notice penalty need not be imposed would not help petitioner, because petitioner paid the amount after the search and not because petitioner found an error or volunteered to make the payment.

13. The following questions of law were proposed by Shri Reddy:

(a) Whether, in the facts and circumstances of the case, the Tribunal has committed an error of law in restoring equal addition on the turnover of Rs.84,05,096/-?

(b) Whether, in the facts and circumstances of the case, the Tribunal has committed an error of law in restoring the levy of penalty under Section 27(3) of the TNVAT Act?

14. Having considered the submissions, we find that in respect of equal addition made, the same is without any basis. The equal addition, in our view, is unwarranted. It is only based on estimate and, that too, for probable suppression, a guess work. There is no material for making equal addition for probable suppression, rather addition is capricious. Therefore, to the extent of equal addition made, we quash and set aside the impugned order. Accordingly, the first question of law is answered in favour of petitioner.

15. As regards penalty, admittedly, the amount of tax has been paid after the search was conducted and, therefore, the department is justified in saying that there was willful suppression. Consequently, the second question of law is answered against petitioner.

Tax case is disposed of accordingly. There shall be no order as to costs. Consequently, interim application stands closed.

(K.R.SHRIRAM, C.J.) (MOHAMMED SHAFFIQ,J.)
01.04.2025

Index : Yes/No
NC : Yes/No
sasi

To:

1. The Manager
   Tamil Nadu Sales Tax Appellate Tribunal
   Chennai – 600 104.

2. The Appellate Deputy Commissioner (CT)
   Cuddalore.

3. The Commercial Tax Officer
   Villupuram-1.

THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ.J.

(sasi)

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