IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2025

CORAM :

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

T.C.R. No.13 of 2025

The State of Tamil Nadu
Rep. by the Joint Commissioner (CT)
Salem Division
Salem. .. Petitioner

Vs.

M.Selvaraj .. Respondent

Prayer : Revision filed under Section 60 of TNVAT Act, 2006 to revise the order dated 06.01.2022 passed in CTSA No.96 of 2018 on the file of Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

For Petitioner	:	Mr.Haja Nazirudeen Additional Advocate General Assisted by Mr.C.Harsha Raj Special Government Pleader
For Respondent	:	Mr.T.Ramesh

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

This revision pertains to the assessment year 2015-16. The following questions of law are proposed:

(1) Whether the learned Tribunal erred in accepting the order of the first appellate authority in deleting the ITC reversal which is not justifiable where in the ITC reversal was made u/s 27(2) for the purchases not reported by the sellers in their returns and since the dealers had not produced any proof or reply before the assessing authority even after granting necessary opportunity; and

(2) Whether the learned Tribunal erred in accepting the order of the first appellate authority in deleting the penalty under Section 27(4) of the TNVAT Act, 2006, wherein penalty gets attracted if there is an ITC reversal u/s 27(2) and Sub-section (2) of Section 27 automatically invokes penalty under Sub-section (4) of Section 27 as explicitly provided in the Act.

2. Respondent is a registered dealer and an assessee in the books of the State Tax Officer, Palacode Assessment Circle coming under the

jurisdiction of Salem Division. Subsequent to the re-organisation of Divisions from July, 2023, dealer was brought under the jurisdiction of Hosur Division. Based on scrutiny of other end dealers Annexure II of the return available in department's website, a notice was issued to respondent for sales which have not been reported in Annexure II of the other end dealer. Notice is dated 01.11.2016 and was served on 10.11.2016. An assessment order dated 28.11.2016, within 18 days, was passed holding that the dealer had not filed any reply or objection to the notice under the TNVAT Act, 2006. ITC credit of Rs.2,88,623/- was disallowed on the basis that the sales have not been reported in Annexure II of the other end dealer and penalty of Rs.2,88,623/- was also levied.

3. Aggrieved by this order of the Assessing Authority, respondent preferred an appeal before the Deputy Commissioner (CT), Salem. The appeal was allowed on 29.06.2017.

4. Aggrieved by the order of the Appellate Deputy Commissioner, State preferred an appeal before the Tamil Nadu Sales Tax Appellate

Tribunal (AB), Coimbatore. Revenue disputed the deleted portion of tax of Rs.2,88,623/- made under Section 19(1) of the TNVAT Act, 2006 and penalty of Rs.2,88,623/- made under Section 27(4) of the TNVAT Act, 2006. The Tribunal was pleased to dismiss the appeal vide order dated 22.02.2022. It is this order which is challenged before us.

5. The stand taken by the Revenue was that the first appellate authority, i.e. Appellate Deputy Commissioner, Salem accepted records related to the mismatching issue for the first time, which was in contravention of the provisions of the Act. It was alleged that no records were produced before the assessing authority and therefore, the action of the first appellate authority in accepting the records produced at the time of appeal was not in order.

6. The fact is respondent/assessee has produced records to explain the alleged mismatch. The Tribunal was pleased to dismiss the appeal and correctly observed that the assessing authority did not even give a reasonable time to the assessee to produce the records. The Tribunal

observed that the notice, though dated 01.11.2016, was delivered only on 10.11.2016 and the assessment order dated 28.11.2016 came to be passed within 18 days. The Assessing Officer had given less than 20 days time to the assessee to produce the documents. The first appellate authority, therefore, gave the assessee an opportunity to produce records before the appellate authority and certainly copies thereof were also made available to the assessing authority. We find nothing wrong in what the first appellate authority did or with the Tribunal confirming the same.

7. Revision is dismissed. There shall be no order as to costs.

(K.R.SHRIRAM, CJ) (MOHAMMED SHAFFIQ,J.)
04.03.2025

Index : Yes/No
Neutral Citation : Yes/No

kpl

To
The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench)
Coimbatore.

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

(kpl)

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