IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

T.C. Nos.72, 74 and 76 of 2025

The State of Tamil Nadu
Represented by
The Joint Commissioner (CT)
Vellore Division, Vellore .. Petitioner in all the petitions

Vs

Tvl.Thanigai Traders
76/H, Arcot Road
Rangapuram - 632 009 .. Respondent in all the petitions

PRAYER: Tax Cases filed under Section 60 of the Tamil Nadu Value Added Tax Act, 2006 to set aside the orders dated 06.02.2019 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in STA Nos.520, 521 and 519 of 2017 and confirm the orders passed by the Assistant Commissioner (ST), Vellore (Rural), dated 30.10.2015.

For Petitioner in all Tax Cases : Ms.Amirtha Dinakaran

COMMON ORDER

(made by N.SENTHILKUMAR, J.)

These tax cases are filed by the Revenue against the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 06.02.2019 made in STA Nos.520, 521 and 519 of 2017 setting aside the orders passed by the Assistant Commissioner (CT), Vellore (Rural), dated 30.10.2015.

2. The brief facts of the case are that the respondent's business place was inspected by the officers of the Enforcement Wing from 06.04.2015 to 10.04.2015 and the officials noticed some defects. Based on the inspection report, the Assessing Officer had revised the assessments of the respondent herein for the years 2012-2013, 2014-2015 and 2011-2012 and passed revised Assessment Orders dated 30.10.2015 and 20.11.2015, as the case may be, under Section 27(1), 22(4) and Section 27(1)(a) of the TNVAT Act, 2006 and also levied penalty of Rs.12,27,775/-, Rs.14,52,708/- and Rs.21,78,294/- respectively.

3. As against the orders of the assessing officer, the respondent herein/assessee had preferred appeals before the appellate authority, namely the Deputy Commissioner (CT), Vellore in AP Nos.1088/2015, 1089/2015 and 1087/2015. The above appeals were partly dismissed and partly allowed by the appellate authority on 21.11.2016. Aggrieved by the orders of the appellate authority, the State has preferred STA Nos.520, 521 & 519 of 2017 before the

Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai. Confirming the orders of the appellate authority dated 21.11.2016, the Tribunal has dismissed all the appeals on 06.02.2019. Challenging the dismissal orders of the Tribunal, the present tax cases have been filed by the State.

4. According to the respondent herein, their accounts had been finalised for the years 2012-2013, 2014-2015 and 2011-2012 on self-assessment basis under Section 22(2) of the TNVAT Act, 2006. The business place of the respondent was inspected from 06.04.2015 to 10.04.2015. At that time, the officers of the enforcement wing have noticed that the purchase and sale registers have not been maintained; that the input tax credit claim and adjustment account were not maintained; sales suppression and that a verification of the monthly returns filed in Form-I revealed that certain purchases were not declared in the monthly returns filed for the respective assessment years concerned in this case. The inspecting officers had noticed certain purchase omissions and thereby added probable omission. Based on the inspection, the officials had sent a proposal. Thereafter, the assessing officer had revised the assessment by levying tax and penalty against the respondent herein as stated supra.

5. Before the appellate authority, the respondent had made a specific plea that the assessing officer has not furnished any details with regard to the name

of the seller, bill number, date, value of the goods and the mode of transport in the assessment order. The inspecting authority without verifying the records, which was the basis for the assessing authority to pass revised assessment order, had imposed penalty and fine as per section 27(3) and Section 22(5) of the Act. Taking note of the failure to mention the details of the seller name, bill number, date, value of the goods and the mode of transport in the assessment order, the appellate authority, partly dismissed and partly allowed the appeals, which was affirmed by the Tribunal.

6. The learned Government Advocate appearing for the Revenue would contend that the suppression were found in the statement given by the assessee himself and the assessee has only stated that records were not maintained. It is not the case of the appellant that there was concealment or misconduct committed by the respondent, which was recorded by the appellant herein. He would further contend that the statement given by the assessee for the assessment years concerned in this case is not the true version and the inspecting officer has identified that there is sales suppression and therefore, penalty has been imposed.

7. The main contention of the respondent/assessee before the appellate authority is that the assessment officer has not given any specific finding but had merely observed that there was possibility of similar omission in the

previous years. The appellate authority by taking into consideration that in the absence of any clear finding by the assessing officer that the dealer has habitually suppressed the sale and purchase, held that an equal time of addition estimated under the head probable omission was not justified. In the absence of any materials, the order passed by the assessing authority is untenable. Taking into consideration of the claim made by the respondent, the appellate authority had set aside the order passed by the assessing officer. Challenging the same, the State has preferred appeals before the Tamil Nadu Sales Tax Appellate Tribunal and the Tribunal has also dismissed the appeals and hence the State has filed these petitions.

8. It is not in dispute that the respondent has submitted his returns for the years 2011-2012, 2012-2013 and 2014-2015. For the assessment year 2012-2013, the assessing authority has estimated the turnover as Rs.1,12,89,882/- for the reason that purchases to the tune of Rs.3,07,832/- were not declared in the monthly returns. Adding freight and profit, the assessing offficer has estimated the above sales turnover and revised the assessment. Though copies of the bills were requested for verification, the inspecting officers and the assessing officer had not given the copies. Hence, the determination and estimation of the turnover under the head probable omission is not justified. The first appellate authority had taken note that of the fact that sales suppression was not culled out

from outside the books and the assessing officer had not proved any wilful non-disclosure of the turnovers on the part of the respondent herein.

9. The learned Government Advocate appearing for the Revenue has relied upon the decision of a Division Bench of this court in ***W.P. No.23806 of 2008 dated 23.09.2024*** and contended that the revised assessment order is in accordance with law. The petitioner has relied upon paragraph 18 of the order, which reads thus:

> *"18. The Tribunal in the appeal filed by the Revenue, by an order dated 02.03.2008 had set aside the orders of the appellate authority and restored the assessment order mainly on the ground that, once the assessee has admitted the stock variation and by voluntary act has given a sworn statement admitting the discrepancies, the assessee cannot be allowed to approbate and reprobate at the later stage."*

10. Admittedly, in the decision relied upon by the learned Government Advocate, the assessee himself has given a voluntary statement disclosing that there were variation in the stock. But, in the case on hand, the statement of the assessee is only to the effect that he has not maintained purchase and sales registers. There is no concession in regard to stock variation. Moreover, when there is no material furnished by the inspecting officer and the assessing authority to arrive at the determination, the impugned order is not in accordance with law.

11. This Court in ***Sri Ramu Furniture Company v. State of Tamil Nadu*** reported in ***2011 SCC OnLine Mad 2712 : (2013) 57 VST 383***, held as follows:

> *"2. The only ground on which the Tribunal restored the equal time addition was the results of the inspection made on February 18, 1999, during the course of the subsequent assessment year 1997-98. Barring that, there were no other materials to restore the equal time addition. It is no doubt true that in the assessment year under consideration, there was an inspection done on March 6, 1997. Except for the deficiency in stock of goods not supported by purchase bills, there were no other materials, which warranted equal time addition towards probable omission. Taking note of the facts therein, the first appellate authority rightly cancelled the equal time addition. The fact that in the subsequent year, there was an inspection, which revealed suppression, by itself, would not be a good ground for sustaining the equal time addition in respect of the assessment year 1996-97. The materials available, hence, have to be looked at as relevant to the transaction to the assessment year under consideration alone. In the absence of any justification to draw inference from the subsequent year's transaction, we do not find any good ground to uphold the order of the Tribunal. Consequenctly, the order of the Tribunal restoring the equal time addition stands set aside and the corresponding penalty also stands set aside. Accordingly, the appeal stands allowed. No costs."*

12. It is to be noted that equal time addition has been made by the appellant for the previous years also, though in the absence of any material

whatsoever to justify the same. In the absence of any material to support the conclusion of suppression, the equal time addition imposed by the appellant cannot be sustained and the appellant cannot now plead that the assessee has evaded tax payment.

13. In view of the same, there is no reason to interfere with the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal dated 06.02.2019 in STA Nos.519, 520 and 521 of 2017. Accordingly, these tax cases are dismissed. No costs.

[A.S.M., J] [N.S., J]
25.06.2025

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes
Asr

To

1.The State of Tamil Nadu
Represented by
The Joint Commissioner (CT)
Vellore Division, Vellore

2.The Government Pleader,
High Court, Madras

DR. ANITA SUMANTH.,J.
and
N.SENTHILKUMAR.,J.

Asr

Tax Case Nos.72, 74 & 76 of 2025

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