BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22/09/2025

CORAM

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

T.C.(MD)No.115 of 2012

The State of Tamil Nadu
Represented by
The Deputy Commissioner of
Commercial Taxes,
Tiruchirappalli Division,
Tiruchirappalli. ...Petitioner

vs.

Tvl.Arvind Electricals,
No.19, Vaiyapuri Nagar,
Karur. ... Respondent

Prayer: Tax Case Revision filed under Section 38(1) of the TNGST Act, 1959 praying to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai in M.T.A.No.172 of 1998 and 173 of 1998 and M.T.M.P.Nos.145 of 1998 and 15 of 2000, dated 07.02.2000.

For Petitioner : Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent : Mr.S.Karunakar

ORDER

P.VELMURUGAN, J.

This Tax Case Revision is filed by the petitioner/Revenue, seeking to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A.Nos.172 of 1998 and 173 of 1998, along with M.T.M.P. Nos. 145 of 1998 and 15 of 2000, dated 07.02.2000.

2. The respondent/assessee was assessed on a total turnover of Rs. 4,66,62,910/- and a taxable turnover of Rs.4,28,21,345/- for the year 1994-95, and a total turnover of Rs. 53,58,656/- and a taxable turnover of Rs. 14,81,202/- for the year 1995-96. The officials of the Assessing Officer inspected the respondent's premises on 13.09.1995, and based on the inspection, the Inspecting Officers detected purchase omissions amounting to Rs.9,36,394/- in respect of 8% goods and Rs.1,020/- for 12% goods for the year 1994-95. Hence, the Assessing Officer applied 15% addition towards gross profit, determined the sales suppression, and further imposed fivefold addition for probable omissions. For the year 1995-96, the inspecting officers identified sales transactions worth Rs.62,87,130/-, leading the assessing officer to impose a fivefold addition for probable omissions in the revision of assessment proceedings. Additionally, a penalty was levied under Section 12(3)(b) of the Act.

3. Aggrieved by the orders of the Assessing Officer, the respondent filed an appeal before the Appellate Assistant Commissioner (CT). The Appellate Authority, after reviewing the D-7 document entries, deleted a portion of the turnover related to actual suppression for both the years 1994-95 and 1995-96. The Appellate Authority further apportioned the suppressed turnover between taxable and non-taxable sales at the ratio of 50:50, holding the absence of clear evidence proving that the suppressed turnover related exclusively to taxable sales. The Appellate Authority also reduced the fivefold addition to an amount equal to the actual suppressed turnover and proportionally reduced the penalty.

4. Dissatisfied with the Appellate Aauthority's order, the respondent/assessee approached the Tribunal to quash the order, while the petitioner/Revenue filed an enhancement petition seeking restoration of the assessing officer's original order, including the penalty. After hearing the arguments and examining the records, the Tribunal modified the appeal by deleting the equal-time addition and dismissed the enhancement petition filed by the Revenue, in the following manner:-

> "*We have gone through the entire records relating to these appeals. The scrutiny of the appeal records revealed that the assessing authority passed best judgment assessment based on the results of inspection conducted by the Department on 13.09.1995. Inspection conducted by the*

Department resulted in recovery of certain incriminating records. On appeal, the Appellate Assistant Commissioner (CT), after considering all aspects, has given his categorical findings in his order at page No.2, in paragraph No.5, pages 4,5,6 and 7. The Appellate Assistant Commissioner (CT) is justified in modifying the orders of the Assessing Officer. However, we feel that the equal addition made is excessive and actual suppression would suffice to meet the ends of justice and the equal addition sustained by the Appellate Assistant Commissioner is deleted."

5. Aggrieved by the order of the Tribunal, the Revenue has filed this Tax Case Revision.

6. The learned counsel for the appellant contends that the Tribunal's decision to delete the equal-time addition is incorrect, as the assessee engaged in multiple unaccounted purchase and sales transactions. The first Appellate Authority had already reduced the fivefold addition to an equal-time addition, considering the former excessive. Given this, the Tribunal's deletion of the equal-time addition, despite the proven suppression, is improper. Furthermore, the Tribunal failed to note that the Appellate Authority's adoption of a 50:50 ratio between taxable and non-taxable goods lacked any factual basis. The assessee did not provide evidence to substantiate that the suppressed transactions pertained to second sales. The Tribunal's decision to delete the equal-time addition without any explicit findings or consideration of the case's merits is legally unsustainable. Therefore, the learned Additional

Government Pleader prays for setting aside the orders of the Tribunal and the Appellate Authority and reinstating the findings of the Assessing Authority.

7. The learned counsel for the respondent/assessee submits that the Tribunal has rightly deleted the equal-time addition, as the assessment was based on mere estimation without concrete evidence of suppression beyond the detected omissions. It is further contended that the first Appellate Authority's decision to adopt a 50:50 ratio for taxable and non-taxable sales was justified, as there was no clear proof that the suppressed turnover pertained solely to taxable goods. The assessee also argues that the Revenue failed to establish the necessity for further additions beyond the actual suppression. Therefore, the Tribunal's order does not warrant interference.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The Tax Case Revision was admitted on the following questions of law:-

> *"(i) Whether the Tribunal is correct in upholding the Appellate Authority order which deleted the actual suppression to an extent of Rs.9,21,245/- unearthed at inspection?*

(ii) Whether the Tribunal is correct in deleting the equal addition re-fixed by the Appellate Assistant Commissioner?

(iii) Whether the Tribunal is correct in upholding the Appellate Authority Commissioner order which deleted penalty levied under Section 12(3)(b) to an extent of Rs.10,18,869/- sustaining only Rs.6,692?'

10. It is not in dispute that the inspection conducted on 13.09.1995 brought to light certain omissions, which were admitted by the assessee. The Assessing Officer, however, proceeded to make a fivefold addition on the ground of probable omissions. On appeal, the Appellate Assistant Commissioner reduced the same to an equal addition while sustaining penalty proportionately. When the matter was carried before the Tribunal, it re-examined the records and rendered the following finding:

"11. Point 1 and 2:

We have gone through the entire records relating to these appeals. The scrutiny of the appeal records revealed that the assessing authority passed best judgment assessment based on the results of inspection conducted by the Department on 13.09.1995. Inspection conducted by the Department resulted in recovery of certain incriminating records. On appeal, the Appellate Assistant Commissioner (CT), after considering all aspects, has given his categorical findings in his order at page No.2, in paragraph No.5, pages 4,5,6 and 7. The Appellate Assistant Commissioner (CT) is justified in modifying the orders of the Assessing Officer. However, we feel that the equal addition made is excessive and actual suppression would suffice to meet the ends of justice and the equal addition sustained by the Appellate Assistant Commissioner is deleted.

In view of the above facts and circumstances of the case, the orders of the Appellate Assistant Commissioner (CT)are set aside, the appeal stands modified.

12. As regard the Enhancement Petition, the learned Additional State Representative, had not pinpointed any specific and deliberate omissions and also not placed before us any fresh evidences for restoring the order of the Assessing Officer. The Appellate Assistant Commissioner (CT) after going through various aspects and also the facts and circumstances of these cases, had come to a logical conclusion and modified these appeals. The action of the Appellate Assistant Commissioner (CT) is within the discretionary powers vested in him. Therefore, the enhancement petition filed by the Revenue is not entertainable and it is rejected

13. In the result, the two appeals are modified and two enhancement petitions are dismissed."

A reading of the above extract shows that the Tribunal carefully considered the assessment order, the inspection report, and the appellate order before arriving at its conclusions.

11. In respect of the first question, namely whether the Tribunal was correct in upholding the Appellate Authority's order which deleted the actual suppression to the extent of Rs.9,21,245/- unearthed during the inspection, the contention of the Revenue does not stand to reason. The Tribunal has not deleted the suppression so unearthed, but has, in fact, confirmed the same. What was interfered with were only the arbitrary additions which had no supporting basis. The distinction between proved suppression and estimated

additions has been clearly brought out, and the Tribunal's view that only actual suppression could be sustained is in consonance with law.

12. As regards the second question, relating to the deletion of the equal addition re-fixed by the Appellate Assistant Commissioner, it is seen that the Tribunal noted that apart from the actual suppression admitted at the time of inspection, no material was placed by the Revenue to sustain such equal addition. An equal or multiple addition, without concrete basis, amounts to a guesswork assessment and cannot be upheld. The Tribunal, therefore, rightly deleted it, holding that in the absence of any specific material, such enhancement could not be sustained. This reasoning is sound and calls for no interference.

13. Turning to the third question, namely whether the Tribunal was correct in upholding the order deleting the penalty levied under Section 12(3)(b) to the extent of Rs.10,18,869/-, it is well settled that penalty is not a matter of course, but one that must rest on established suppression or wilful default. To meet the ends of justice, the Tribunal found that the equal addition made was excessive and that only the actual suppression would suffice. Consequently, the equal addition sustained by the Appellate Assistant Commissioner was deleted. This finding is in accordance with law and calls for no interference.

14. On an overall consideration, it is clear that the Tribunal's conclusions are supported by evidence and founded upon settled legal principles. No error or perversity is shown so as to warrant interference and accordingly, the substantial questions of law are answered against the Revenue.

15. Accordingly, the order of the Tribunal is confirmed in its entirety. These Tax Case Revisions stand dismissed. No costs.

(P.V., J.) (K.K.R.K., J.)
22/09/2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

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

2. The Appellate Assistant Commissioner (CT),
   Tiruchy.

3. The Commercial Tax Officer,
   Karur.

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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