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T.C.(MD).No.133 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Tax Case (MD).No.133 of 2012

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The State of Tamil Nadu,
Represented by
The Deputy Commissioner (C.T),
Tirunelveli Division,
Tirunelveli-627 002.

.. Petitioner

Vs.

Tvl.Alagar Jewellery Mart, Tuticorin.

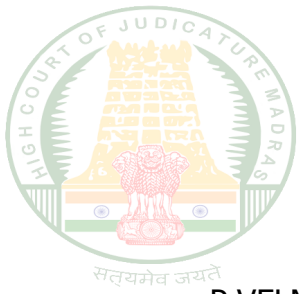
.. Respondent

Tax Case (Revision) filed under Section 38 of the TNGST Act against the order dated 23.06.2003 passed in M.T.A.No.10 of 2002 on the file of the Tamil Nadu Sales Tax Appellate Tribunal, Madurai.

For petitioner : Mr.R.Suresh Kumar, Addl.G.P.

For respondent: Mr.S.Karunakar

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ORDER

P.VELMURUGAN, J.

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This Tax Case (Revision) is filed by the State of Tamil Nadu challenging the order dated 23.06.2003 passed in M.T.A.No.10 of 2002 by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai.

2. The facts giving rise to this revision are that the respondent, a dealer in gold ornaments and silver articles, reported a total turnover of Rs.95,94,864/- and a taxable turnover of Rs.66,34,534/- for the assessment year 1995-96 under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The business premises of the respondent were inspected by the Enforcement Wing Officials on 14.11.1996. During such inspection, serious discrepancies were found in relation to the issue of old gold for conversion and the return of new ornaments.

3. On verification of the records, it was noticed that the respondent had purchased 4501.800 grams of old ornaments from customers valued at Rs. 18,00,720/-. Further, 2269.150 grams of old gold valued at Rs.9,07,660/- had been issued to goldsmiths and new ornaments weighing 2335.650 grams valued at Rs.11,51,475/- were received back. The inspection also revealed suppression of Rs.38,59,855/-. Adding an equal quantum for probable suppression, the total suppression worked out to Rs.77,19,710/-.

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4. Based on these findings, the Assessing Officer reopened the assessment and proposed to revise the taxable turnover at Rs.1,43,54,244/-, apart from levying penalty under Section 16(2) of the TNGST Act at 150% on the suppressed turnover of Rs.38,59,855/-. The respondent was issued pre-revision notice dated 09.06.1999 and, after prolonged correspondence, filed final objections on 24.08.1999 contending that there was no purchase or sale involved; according to the respondent, the gold was received from customers for re-making ornaments, sent to goldsmiths for work, and received back in new form, for which only making charges were collected.

5. The Assessing Officer, by order dated 30.08.1999, rejected the objections, confirmed the suppression, and determined the tax liability at Rs. 1,23,257/- with surcharge of Rs.18,489/-, additional sales tax of Rs.2,07,567/-, and penalty of Rs.3,01,863/-. In short, the Assessing Officer held that the suppression was proved and that the transactions constituted purchase and sale, not mere job work.

6. On appeal in A.P.No.457 of 1999, the Appellate Assistant Commissioner, by order dated 12.10.2001, partly modified the assessment. He sustained the actual suppression of Rs.27,08,380/- but deleted the equal addition



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made towards probable suppression. He observed that the entire books of accounts had already been verified by the inspecting officers and the assessing officer, and hence there was no justification to retain estimated additions. However, he confirmed the penalty under Section 16(2) of the Act on the sustained turnover. Thus, the learned Appellate Assistant Commissioner granted partial relief but maintained tax and penalty on actual suppression.

7. Aggrieved by such order, both sides preferred second appeals before the Sales Tax Appellate Tribunal. In M.T.A.No.1052 of 2002, filed by the State, the prayer was for restoration of the equal addition deleted by the first appellate authority. In M.T.A.No.10 of 2002, filed by the respondent, the contention was that the transactions themselves were not sales but only in the nature of job work, and hence no tax was leviable.

8. The Tribunal, while dismissing the appeal filed by the State, held that once the inspecting officials and the assessing officer had verified the entire records and found only the actual suppression, there was no basis to sustain the equal addition. At the same time, in the appeal filed by the dealer, the Tribunal accepted the plea of job work and deleted the turnover of Rs.9,07,660/- and Rs. 11,51,475/-, holding that these were only issue and receipt of gold ornaments



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for re-making. The Tribunal, however, confirmed the turnover of Rs.18,00,720/- relating to purchase of old ornaments from customers and sustained penalty on the same. Thus, the Tribunal's order resulted in complete deletion of two items of turnover sustained by the learned Appellate Assistant Commissioner, leaving only Rs.18,00,720/- as taxable.

9. This Court, while admitting the revision, formulated the following substantial questions of law:

"(i) Whether the Tribunal is proper to allow the contention of the assessee when they did not file the objection with relevant records against the pre-revision notice issued by the assessing officer, even many opportunities were sought after by them and they were offered the copies of the incriminating records and were given fair and reasonable chance for the second time to enable them to file the additional objection before passing the assessment order ?

(ii) Whether the Tribunal failed in its observation which prompted it to conclude that the incriminating records were not enough for proving the suppression when it did not raise the question as to why the assessee had not refuted their claim previously and rejected the claim for restoration of the proposals of the assessing officer ?

(iii) The assessee after getting the copies of the incriminating records from the officers, and then manipulated the accounts and records to suit the contents found in them in order to show they have maintained the proper accounts and why the Tribunal had not appreciated such facts?"



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10. Learned Additional Government Pleader appearing for the petitioner submitted that the Tribunal erred in treating the transactions as job work. It was urged that the inspection revealed not only discrepancies in stock but also pocket notebooks showing issue of 5382.650 grams of old gold to 17 goldsmiths and receipt of only 3951.800 grams of new jewels, with no accounts produced for such conversion. The respondent had not maintained any proper ledger evidencing receipt and return of gold. In the absence of reliable records, the assessing officer rightly treated the transactions as purchase and sale. Reliance was placed on the decision in ***State of Kerala v. Alappat Palathingal Fashion***, wherein it was held that acceptance of old gold ornaments for re-making without proper invoices or receipts amounts to purchase and sale. It was further submitted that the plea of “coolly conversion” was an afterthought introduced only in appeal.

11. On the other hand, learned counsel for the respondent contended that there was no element of sale in the transactions. It was argued that customers entrusted their old ornaments for re-making, the goldsmith was paid labour charges, and the finished ornaments were returned to the same customers. It was submitted that such activity constituted job work and not a sale.



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

13. After carefully examining the materials on record, including the findings of the lower authorities and the arguments presented by both sides, this Court is of the considered view that the approach adopted by the Tribunal requires re-examination. During an inspection carried out by the Enforcement Wing Officials on 14.11.1996, several significant discrepancies were found in the respondent's accounts. According to the inspection report, the respondent had purchased 4,501.800 grams of old gold ornaments from customers, valued at Rs. 18,00,720/-. Out of this, 2,269.150 grams of old gold, valued at Rs. 9,07,660/-, were sent to goldsmiths for conversion, and 2,335.650 grams of new ornaments, valued at Rs.11,51,475/-, were said to have been received back. Additionally, the inspecting officers noted a suppression of turnover amounting to Rs.38,59,855/-. Applying the standard practice of equal addition for probable suppression, the total suppressed turnover was computed at Rs.77,19,710/-. These findings were not speculative or based solely on estimates but were drawn from actual records obtained during the inspection.



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14. Furthermore, two pocket notebooks recovered from the respondent's premises showed that a total of 5,382.650 grams of old gold had been given to 17 goldsmiths, but only 3,951.800 grams of new ornaments were received in return. This quantitative mismatch in the gold transactions was not satisfactorily explained. Moreover, the respondent failed to provide any ledgers, invoices, or receipts to show that the gold received from customers was returned to the same individuals after being reworked. The absence of such essential records weakens the respondent's claim that the transactions were purely job work. In genuine job work, dealers are expected to maintain detailed records, such as receipts with customer details, the weight of gold received and delivered, and the charges for workmanship all of which are missing in this case. It is a well-settled principle, as held in ***State of Tamil Nadu v. S. Ramasamy Chettiar*** [(1973) 32 STC 77], that the Assessing Officer is best placed to evaluate the facts, and belated explanations without supporting documents cannot override findings based on primary evidence. If the transactions were truly job work, proper registers and documents would have been maintained. The total absence of such records, combined with the discrepancies found during inspection, reasonably leads to the conclusion that the transactions were in fact purchases and sales, not mere remaking of old ornaments.



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15. The Kerala High Court in ***S.T.Rev No.396 of 2004*** in the case of ***Alappat Palathingal Fashion v. State of Kerala*** has categorically held that where an assessee accepts old gold for re-making but does not maintain proper records, the assessing authority is right in treating the transactions as purchase of old gold and sale of new jewellery. The facts in the present case are applicable to the principles laid down in that decision. Therefore, the Tribunal's finding in favour of the respondent, accepting their job work plea despite strong evidence to the contrary, cannot be sustained. Similarly, the Appellate Assistant Commissioner's decision to delete the equal addition for probable suppression is not justified, especially when records were not properly maintained and stock discrepancies were left unexplained.

16. Accordingly, the order passed by the Tamil Nadu Sales Tax Appellate Tribunal on 23.06.2003 in M.T.A.No.10 of 2002 is set aside. The order of the Appellate Assistant Commissioner is also modified to the extent that the deletion of the equal addition for probable suppression is reversed. As a result, the original assessment order dated 30.08.1999, passed by the Assessing Officer and imposing a penalty under Section 16(2) of the Tamil Nadu General Sales Tax Act, is restored and confirmed. The substantial questions of law are answered in

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favour of the Revenue. This Tax Case (Revision) is allowed. There will be no

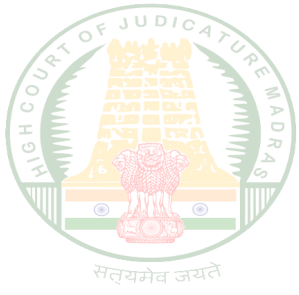
order as to costs.

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(P.V., J.) (K.K.R.K., J.)
26/09/2025

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

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- To
- 1.The Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai.
 - 2.The Appellate Assistant Commissioner (CT),
(FAC), Tirunelveli.
 - 3.The Additional Deputy Commercial Tax Officer-II,
Tutiorin.



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

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