

T.C.(MD).No.2003 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.01.2025

CORAM :

**THE HON'BLE MR. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

T.C.(MD).No.2003 of 2006

The Deputy Commissioner of Police,
State of Tamil Nadu,
Commercial Taxes,
Tiruchirappalli Division,
Tiruchirappalli.

... Petitioner

Vs.

TVL. City Plywoods,
317, Big Bazaar Street,
Trichy.

... Respondent

PRAYER: Tax Case (Revision) is filed under Section 38(1) of TNGST Act, 1959, praying this Court to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 24.09.1999, in M.T.A.No.251 of 1997.

For Appellant : Mr.R.Suresh Kumar
Additional Government Pleader
For Respondent : No appearance



T.C.(MD).No.2003 of 2006

ORDER

WEB COPY

[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

This petition has been filed to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 24.09.1999, in M.T.A.No.251 of 1997.

2.The respondent is a dealer in plywoods, Fevicol and laminated sheets. They submitted total turnover of Rs.1,62,84,241/- and taxable turnover of Rs.3,29,023/- for the year 1994-1995. Subsequently, inspection was conducted by the assessing authority on 22.12.1994 and they found suppression of sale and they estimated sale suppression at Rs. 12,358/- at 8% and Rs.73,596/- at 12% based on stock difference. The assessing authority consequently, calculated the suppression and determined the total taxable turnover Rs.1,74,31,541/- and Rs.22,63,283 respectively and a penalty was also imposed u/s. 12(3) (b) of the TNGST Act 59 at Rs.3,75,726/-. It is also found during the course of the inspection that, the dealer without maintaining separate stock account and sale account and sale bills for taxable and non taxable goods,



T.C.(MD).No.2003 of 2006

mingled all other goods and therefore, they calculated the above amount and passed the order on 30.09.1996. The said best assessment of the authority dated 30.09.1996 was challenged before the Appellate Assistant Commissioner, Trichy in Appeal No. 728/1996. The appellate authority upon appreciation of the entire records and finding of the assessing authority reduced the taxable turn over and consequently, reduced the tax imposed by the assessing authority on finding that there was a suppression of some of the items. The appellate authority made a detailed discussion about each items and held that the assessee wantonly and wilfully suppressed the transactions and reworked out escape assessment as Rs.2,24,350/- and levied the penalty by order dated 28.02.1997. The same was challenged by the assessee before the Tamil Sale Tax Appellate Tribunal (Additional Bench), Madurai -20 in Madurai Tribunal Appeal No.251 of 1997 and the revenue also filed the enhancement petition. All were clubbed together and common hearing was conducted and the common order passed in Madurai Tribunal Appeal No. 251 of 1997 and Madurai Tribunal Miscellaneous petition No. 173 of 1997 and 284 of 1997. The tribunal had allowed the appeal and dismissed the enhancement petition filed by the revenue. Challenging the same the revenue filed this tax cases before this Court.



T.C.(MD).No.2003 of 2006

3.Thiru.R.Suresh Kumar, learned Additional Government Pleader

would submit that the assessing authority has held that there was material suppression and also there is no proper maintenance of separate stock account and sales account and sale bills for taxable and non taxable goods and they intentionally mingled the stocks of the non taxable and taxable goods and the assessee had wilfully suppressed transactions. The appellate authority also concurred with the said assessing authority's finding relating to the number of items and also concurred with the finding that there was wilful suppression of the transaction. But, the appellate authority reassessed the amount and reduced the taxable turnover and consequential penalty. The same was reversed by the appellate tribunal without finding any perversity in the finding of the both authorities and totally exonerated him from the liability. Therefore, the order of the tribunal is liable to be set aside.

4.The assessee admitted the inspection and also accepted the stock difference at the time of the inspection, at the place of the business and the assessee also did not maintain separate stock account and sales accounts and sales bills for taxable and non taxable goods and they mingled with all other goods. But the assessee agrued that the order of the Tribunal is correct.



T.C.(MD).No.2003 of 2006

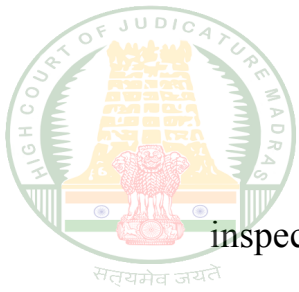
WEB COPY

5.The learned counsel for the respondent submitted that the learned Tribunal after considering the various sale bills and has held that the entries in the slips are interrelated and there is no suppression of transaction. Hence, the department has not proved the suppression with clinching evidence based on the slips recovered. The same was not properly considered by both authorities and hence the tribunal has rightly considered the same and set aside the orders of both authorities and hence there is no infirmity in this order. Therefore, he seeks to confirm the order.

6.This Court considered the rival submissions made on either side and perused the records and the assessment order, appellate order and the impugned tribunal order.

7.At the time of admission the following substantial questions of law have been framed:-

7.1.Whether in the fact and in the circumstances of the case, the tribunal was right in granting the relief in favour of the assessee without considering the voluminous records which were unearthed during the



T.C.(MD).No.2003 of 2006

inspection conducted by the department on 22.12.94.

WEB COPY

7.2. Whether on the fact and in the circumstances of the case, the tribunal is right in deleting the penalty under section 12 (3)(b) of the Act.

8. The respondent was conducting the business in Trichy. They are dealers in Tv1 City Plywoods fevicol and laminated sheets and assessee under the Tamil Nadu General Sales Tax Act 1959. They have also submitted their total turnover and taxable turnover of Rs.1,62,84,241/- and Rs.3,29,023/- respectively for the year 1994-95. The assessing authorities conducted the inspection and they found suppression of the sales and that the dealer had not maintained the separate stock account and sale account and sale bills for taxable and non taxable goods and mingled with all other goods. The assessee also admitted the stock difference at the time of the inspection. Therefore, the assessing authority has determined the liability along with penalty. The appellate authority, even though concurred with the finding that there was suppression, but reduced the liability. But, the tribunal has not considered the said concurrent finding and gave a third finding that the entries in the seized slips are interrelated and hence, there is no suppression of transaction. In the considerable opinion of this Court, the said finding is not on the basis



T.C.(MD).No.2003 of 2006

of any record and also this court finds no discussion on the error committed by both assessing authority and the appellate authority.

Without finding any error on the finding of the both the authorities, the tribunal has no jurisdiction to reverse the said finding. Moreover, the appellate authority on appreciation of the evidence on record has held that assessee have accepted the stock difference at the time of the inspection.

9.From the record, it is also clear that assessee had not maintained separate stock account and sales account and sale bills for taxable and non taxable goods. The inspecting authority found that the stocks of the non taxable and taxable goods were mingled with all other goods. The assessing authority on appreciation of the entire records and the absence of the documents on the side of the assessee during the course of the inspection has found that there was a wilful suppression. The appellate authority also concurred with the said finding of the wilful suppression. This has not been properly appreciated by the Tribunal.

10.In view of the above discussion, this Court holds that the learend Tribunal has committed jurisdictional error in interfering with the

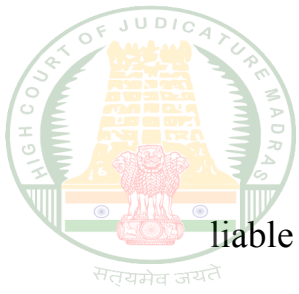


T.C.(MD).No.2003 of 2006

WEB COPY

concurrent finding of the both assessing authority and the appellate authority relating to the wilful suppression and erroneously set aside the order of assessment made by the assessing authority by dismissing the revenue enhancement petition and setting aside the appellate authority's order in determining the less amount other than the amount fixed by the assessing authority. The finding of the revenue that the tribunal has not proved the suppression with clinching evidence based on the slips that were recovered at the time of the inspection is against the record. From the perusal of the order of the assessment authority, it is clear that there are voluminous records were produced to prove the suppression of sale. Apart from that, the assessee also admitted at the time of inspection that there was stock difference. In that event, assessee is duty bound to dispel the same. Therefore, the finding of the appellate authority that the both assessing authority has not proved the suppression is not correct and consequently the appellate authority order in reducing the liability by wrongly applying the principle **40 STC 531, 21 STC Page 25, 28 STC 610 and 30 STC 556** is also liable to be set aside.

11.In view of the above discussion, the case of the revenue is accepted and the impugned order of the tribunal dated 24.09.1999 is



T.C.(MD).No.2003 of 2006

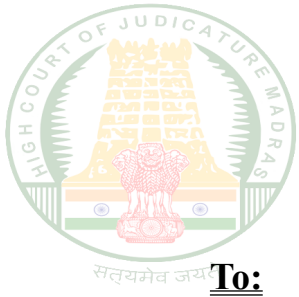
liable to be set aside and the order of the assessing authority dated 30.09.1996 is liable to be restored.

12. Accordingly, the tax case No. 8 of 2010 is allowed by setting aside the order of Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 24.09.1999, in M.T.A.No.251 of 1997. Consequently, the order of the assessing authority, in TNGST No. 346940/94-95, dated 30.09.1996 is restored. There shall be no order to costs.

[P.V.J.,] & [K.K.R.K.J.,]

27.01.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
vsg/sbn



T.C.(MD).No.2003 of 2006

To:

WEB COPY

1. The Tamil Nadu Sales Tax
Appellate Tribunal (Additional Bench),
Madurai.
2. The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



T.C.(MD).No.2003 of 2006

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

vsg/sbn

T.C.(MD).No.2003 of 2006

Dated :27.01.2025