



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-06-2026

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**THE HON'BLE DR JUSTICE G. JAYACHANDRAN
AND
THE HON'BLE MRS.JUSTICE N. MALA**

Tax Case No. 1617 of 2008

The State of Tamil Nadu
Rep by The Deputy Commissioner (CT),
Chennai (East) Division,
Greens Road, Chennai-6

..Petitioner

Vs

Tvl Matchless Wire Products
No.21 T.R.Mudali Street,
Chennai 600 079.

..Respondent

PRAYER: Tax Case is filed under Section 38 of the T.N.G.S.T Act, 1959, praying to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, as passed in Tribunal Appeal No. 1023/98 and C.O.P.No.212/99 dated 23.03.2000.

For Petitioner: Ms.Amirta Poongodi Dinakaran
Government Advocate (Taxes)

For Respondent: Mr.T.Pramod Kumar Chopda

ORDER

(Order of the Court was made by Dr.G.Jayachandran J.)

Appeal filed by the Revenue, being aggrieved by the order passed by the
Sales Tax Appellate Tribunal.

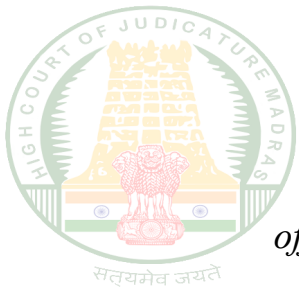


2. The short facts involved in this case are that the premises of the assessee was inspected on 21.08.1993 by the Enforcement Wing of the Commercial Taxes Department. During the inspection, the officials found a suppression of stock and accounts on comparing the physical stock available on the premises. Consequently, the Department fixed the suppressed turnover at Rs.10,75,587/- and imposed an equal amount as a penalty.

3. The primary contention of the Department was that the assessee maintained no books of accounts at the time of inspection by the Enforcement Wing and failed to produce the accounts at the time of inspection warranting the assessment of both tax and penalty.

4. However, the record reveals that the assessee subsequently produced the books of accounts, which were rejected by the Assessing Officer. When the matter escalated to the Tribunal, both the Department's appeal and the assessee's cross objections, challenging the order of the Assessing Officer (as confirmed by the Appellate Authority), were considered together.

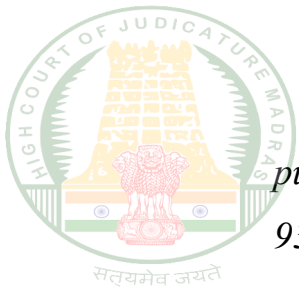
5. The Tribunal, after examining the rival contentions raised by both sides, partly allowed the appeal. The relevant portion of the order of the Tribunal is extracted below for better appreciation of the facts:



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“8. We are unable to accept the findings of the assessing officer in this regard. It is a fact that on the day of inspection no current accounts were produced. That does not mean automatically all the stocks found at the time of inspection are unaccounted transactions. The citation of the learned Advocate is relevant in the present case. Further, only when there is a Nil opening stock and Nil purchases and sales till the time of inspection and entire stock on the day of inspection could be taken as suppression. But in the present case, the sale bills were seen by the inspecting officers. For April, May June, the dealers had filed monthly returns declaring both taxable and non taxable turnovers. So, it is clear that till the time of inspection, the appellant is having both purchases and sales. Already, the closing stock inventory was produced for 192-93 account. It is evident now that the appellant is having opening stock for 93-94. Then it is to be find out whether the entire purchases shown in the stock book are after thought arrangement or not. As rightly contended by the learned Advocate, most of the purchases are scraps from the Railways and as per the stock book, there were purchases prior to the inspection, so, taking the fact that there is opening stock, genuine purchases and sales till the time of inspection and monthly returns have been filed regularly, we are of the opinion that the subsequent production of stock book may be an offence for the violation of Tamil Nadu General Sales Tax Rules, but it is not sufficient proof that all the stocks held on the day of inspection are suppressed goods. Unless the stock book and purchase account subsequently produced can be of rejection, then reliance can be made on the stock book and purchase account subsequently produced. As observed by us, the

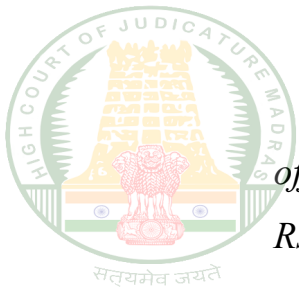


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purchases from Railways, the closing stock declared for 1992-93, filing of monthly returns are ample evidence to show that the production of stock book and production account before the Assessing officers are genuine records which can be relied on. Then, that reconciliation statement filed by the learned Advocate and even before the Assessing officer this exercise was done. According to the book stock only negligible variation was found. This can be easily ignored. It is also necessary to point out that the Assessing officer is not correct in making 25% towards manufacturing cost as most of the materials are finished goods. So, by considering those factors, we are of the opinion that the suppression of Rs. 10,75,587/- and another equal addition are not sustainable. This Rs.21,64,008/- consists of Rs. 19,13,658/- at 12% and Rs.2,37,516/- at 5%. Both these estimations are ordered to be deleted.

9.Second sales disallowance Rs.8,914/- at 5% Before us, sufficient proofs are now filed for the sufferance of tax at 5%. So this is deleted. Regarding the levy of higher rate of tax for want of Form XVII on a turnover of Rs. 1,47,841/- at 12% and Rs.7190/- at 5%. We are of the opinion that the Assessing officer is correct in levying a higher rate in the absence of Form XVII. Even before us, no documents were filed in support of the form XVII sales. In this context, the learned Advocate has contended that the turnover of Rs.1,47,841/- is liable to be taxed only at 8% and not at 12%. The learned Advocate has contended that this copper wires are not sold to electrical undertakings, and so it should be only assessed at 8%. In the absence of any material evidence to that effect, we confirm the order of the Assessing



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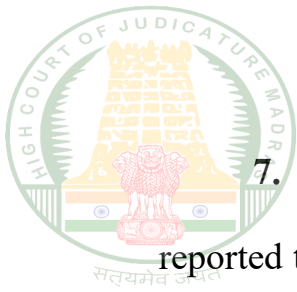


officer in this regard. Similarly, on a turnover of Rs.8,305/- and Rs.4,971/-, we find that the rate of tax has been correctly adopted by the Assessing officer as the end use has not been proved.

10. PENALTY As actuals and estimated suppressions were all deleted, no penalty is leviable on these turnover. However this assessment is related to 1993-94 and so, 12(2) penalty can be levied for the difference between the tax as per return and assessed.

11. We have confirmed the higher rate of tax on certain turnovers. Only if there is a lesser payment on the above turnovers penalty can be levied. So the Assessing Officer is directed to verify this aspect and levy 12(3)(b) of penalty if there is difference between the tax assessed and as per return. For this limited purposes, alone, penalty portion is remanded. The cross objections petition filed by the state is only a counter to the grounds of appeal.”

6. The Department, dissatisfied with the order of the Tribunal insofar as the observation regarding the penalty imposed, has preferred this appeal. The Revenue contends that once a suppression of accounts is established, the levy of penalty is automatic and therefore, the Tribunal ought to have held that the penalty imposed under Section 12(3) by the Assessing Officer was justified.



7. When the matter taken up for final hearing after 18 years, it was reported that the assessee is no more and subsequent attempts to serve notice on the legal heirs ended in futile. The impugned order of the Tribunal, which is extracted above and the ground of appeal preferred by the Department, clearly exposes the frivolous litigation initiated by the Revenue without application of mind.

8. During a surprise inspection by the Enforcement Wing of the Commercial Tax Department, it may unearth suppression of turnover and tax evasion. In such case, the assessee must be given a fair opportunity to produce their books of accounts, if any. On production of accounts, the same ought to be properly scrutinized. In this case, the Assessing Officer and the Appellate Authority had declined to look into the books of accounts produced by the assessee, since the same were produced subsequent to the date of inspection.

9. The genuineness of the books of accounts should have been tested by the authority instead of rejecting it at the threshold. Taking note of this violation of the natural justice principle, the Tribunal rightly held that the tax liability must be determined based on the records and the actual utilization of the goods. Penalty can be levied only if there is any discrepancy in the disclosure of tax leading to suppression and such penalty must be restricted to the difference between the tax assessed and the tax declared in the return. We



find no error or infirmity in the said finding of the Tribunal. Hence, this Tax Case stands dismissed.

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10. Considering the fact that this frivolous appeal was filed by the Department and kept pending for more than 18 years, thereby wasting the precious judicial time of this Court, costs of Rs.10,000/- (Rupees Ten Thousand only) is imposed.

11. The Department is directed to pay this amount to the Tamil Nadu State Legal Services Authority (TNSLSA), High Court Campus, Chennai 600 104, within a period of four (4) weeks from the date of receipt of a copy of this order. The Government shall be at liberty to recover the said costs from the officer responsible for filing this frivolous petition.

(Dr.G.J.,J.) (N.M.,J.)
15-06-2026

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

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and
N.MALA J.

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