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Crl.OP(MD)No.22161 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 07.11.2025

Order Pronounced on: 29.01.2026

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

T.C.(MD).No.15 of 2013

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The State of Tamil Nadu
represented by
The Deputy Commissioner (CT),
Madurai Division,
Madurai.

.. Petitioner

Vs.

Tvl.Veera Associates,
Madurai.

.. Respondent

Tax Case (Revision) filed under Section 38(1) of the Tamil Nadu General Sales Tax Act against the order dated 11.12.2003 in Madurai Tribunal Appeal No.837 of 2001, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai.

For appellant : Mr.R.Suresh Kumar,
Additional Government Pleader



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For respondent : No appearance



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ORDER

P.VELMURUGAN, J

This Tax Case Revision is filed by the State of Tamil Nadu, represented by the Deputy Commissioner (CT), Madurai Division, challenging the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 11.12.2003 in M.T.A.No.837 of 2001, relating to the assessment year 1999–2000.

2. The respondent–dealer, Tvl. Veera Associates, Madurai, is engaged in the trading of cotton yarn. On 29.07.1999, the Enforcement Wing conducted an inspection in the business premises and godowns connected with the dealer. During inspection, two slips were recovered which the officers treated as unaccounted transactions. A stock discrepancy was also recorded, and certain provisional



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purchase entries were not immediately reflected in the registers.

3. Based on these materials, the Assessing Officer rejected the accounts and framed the assessment on best-judgment basis. He determined the taxable turnover at Rs.5,23,25,583/- as against the declared turnover of Rs. 62,23,903/-, and imposed penalty under Section 12(3)(b) of the Act.

4. Aggrieved by the above said order, the dealer preferred first appeal before the Appellate Assistant Commissioner (CT), Madurai (South), in A.P.No.99 of 2001. The Appellate Assistant Commissioner, by order dated 24.07.2001, remanded the matter to the Assessing Officer for fresh consideration, with a direction to properly verify the records and afford adequate opportunity to the assessee, holding as follows:-

"The Assessing Officer may kindly be requested to recheck the accounts with materials



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now furnished and pass appropriate order is found in order".

The verification report submitted by the Departmental Representative has been carefully perused. The verification report revealed the fact that the appellants have dealing with one Thiru Sarof Malagoan, Maharashtra State in respect of certain consignment sales transactions effected. Further they have transactions with one Tvl.New Sarika Cotton Traders, Guntur in respect of cotton purchases. Further they have sent cotton lints to Tvl.Varadhalakshm Mills and Ayyappan Textiles in respect of which stock differences have been arrived out. But at the time of processing of the case by the inspecting officers, the appellants have furnished only a portion of the records before them and a major part of the records were not furnished before them to prove their contentions. Further for the pre-assessment notice issued, the appellants have filed their reply and it is available at P.795 of the assessment file. In the reply filed, the appellants stated that the transactions as per slips were clearly available in their books of accounts and there was no stock variation as alleged with reference to the materials sent to Tvl. Varadhaiakshmi Mills and Ayyappan Textile Mills from the Godown of Sitalakshmi Mills for further processing. Therefore, they requested the Assessing Officer to give them a personal hearing to produce the books of accounts and other related records on appointed date. But, the Assessing Officer without considering the request passed a best judgment orders. Now at the time of hearing the Authorised Representative has produced all the related records and a verification was also made by the Departmental Representative. Therefore, in order to prove their innocence of the appellants are necessarily to be given a chance to produce the related records before the Assessing Officer for his verification. Therefore, the assessment made on the actual suppressed turnover of Rs. 65,42,071.00, Rs.1,63,05,071.00, Rs.2,03,698.00 and of the equal addition of the above three turnovers and of the penalty levied at Rs.12,00,072.00 under sec. 12(3)(b) of the Act are ordered to be set aside, and this case is remanded back to the Assessing Officer for fresh consideration. The appellants are directed to produce all the records before the



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Assessing Officer for his verification. The Assessing Officer on verification of the records furnished is a liability to assess the appellants according to the provisions of the TNGST Act 1959. If the Assessing Officer is able to prove the actual suppression, he is at liberty to levy penalty under sec. 12(3)(b) of the Act also.

In the result, the appeal is "REMANDED".

5. Against the order of remand, the dealer filed second appeal before the Sales Tax Appellate Tribunal, Madurai, in M.T.A.No.837 of 2001. The Tribunal, by order dated 11.12.2003, partly allowed the appeal. It accepted the dealer's explanation regarding the slips and most of the alleged stock discrepancies, holding that they were duly accounted for. It sustained tax liability only on 2,550.96 kgs of cotton yarn, directing levy of tax at 4% on that turnover. The Tribunal deleted the penalty under Section 12(3)(b), holding that penalty cannot be levied on estimated turnover after the amendment by Act 60 of 1997. The relevant portion of the said findings is extracted hereunder:-

"In this case as the records produced had been verified by the Appellate Assistant Commissioner, we found that as per the verification report except the



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difference in cotton yarn to the extent of 2550.96 kgs, all the other transactions including the entries found in slip Nos.1 and 2 and the said stock discrepancy had been accounted for by the appellants which had been accepted by the Appellate Assistant Commissioner. Therefore, we set aside the order of the lower authorities in respect of the estimation including further addition arrived by the lower authorities and delete the tax levied on such estimation except the tax leviable on the value of 2550.96 kgs of cotton yarn. The Assessing Officer is directed to levy tax at 4% on the value and 2550.96 kgs because the difference cannot be considered as meagre.

Regarding the quantum of penalty remanded by the Appellate Assistant Commissioner which has been levied under Section 12(3)(b) of the Act by the Assessing Officer. The finding given by the Appellate Assistant Commissioner that if there is suppression the Assessing Officer can levy penalty is not acceptable for the reason that in this case we have set aside the tax levied on the estimated turnover arrived by the Assessing Officer. Therefore, penalty remanded by the Appellate Assistant Commissioner is not sustainable and accordingly, we order for deletion of penalty also. Moreover, we found that no penalty under Section 12(3) (b) is called for in respect of tax due on the cotton yarn sustained by us, because the assessment relate to the year 1999-2000 and penalty cannot be levied on the estimated turnover as per the amended provision by Act 60 of 1997.

In the result, the appeal stands partly allowed and partly dismissed."

6. Aggrieved by the said decision of the Tribunal, the Department has preferred the present revision.

7. This Tax Case Revision was admitted on 21.06.2013 on the following substantial questions of law:



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(1) Whether the order of the Tribunal is proper in entertaining the second appeal against remanding order passed by the First Appellate Authority under Section 31 of the Tamil Nadu General Sales Tax Act (for short, "TNGST Act"), when the proviso to Section 36 of the said Act, specifically bars the Tribunal from admitting such cases?

(ii) Whether the Tribunal after finding those facts, could still adjudicate the second appeal of the assessee and pass orders against the Revenue and such order of the Tribunal is sustainable in law? and

(iii) Whether the Original Assessment Order would stand for the second appeal before the Tribunal, when it was already set aside by the First Appellate Authority and remanding the same for appraisal of the facts and findings and for fresh consideration by the Assessing Authority?

8. The learned Additional Government Pleader appearing for the petitioner submitted that the Tribunal committed a serious error in partly allowing the appeal filed by the dealer without rendering proper findings and without appreciating the facts placed before it. Such an approach, it was urged, is unsustainable in law. The Tribunal ought not to have interfered with the order of the first appellate authority, which was one of remand. The first appellate authority, after due verification of facts, had rightly remanded the matter to



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the Assessing Officer for further enquiry and verification. In these circumstances, the Tribunal was not justified in partly allowing the appeal by relying upon the decision reported in 72 STC 343, which, according to the learned Additional Government Pleader, is inapplicable, since documents or affidavits produced for the first time at the appellate stage cannot be accepted as genuine without proper scrutiny. It was further contended that the Tribunal failed to appreciate that the order of remand passed by the first appellate authority was judicious and reasonable. Even though the Tribunal itself accepted that stock variation did exist, it erred in partly allowing the appeal, which renders its order legally untenable. Inasmuch as the levy of tax was fully justified on the materials available, the consequential levy of penalty was also warranted. For all these reasons, the learned Additional Government Pleader prayed that the order of the Tribunal dated 11.12.2003 be set aside and the revision petition be allowed.

9. As there was no appearance on behalf of the respondent, the petitioner was permitted to effect substituted



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service on 29.10.2024. However, as service was not effected, once again on 12.09.2025 the petitioner was permitted to effect substituted service on the respondent. When the matter was listed on 22.10.2025, it was recorded that paper publication had been effected, but despite such service the respondent has not entered appearance till date.

10. Heard the learned Additional Government Pleader appearing for the petitioner. Since the present Tax Case Revision pertains to the year 2013 and has been pending for long, the case is taken up for final hearing and accordingly orders are passed on the basis of the materials available on record.

11. After hearing the learned Additional Government Pleader for the petitioner and on examining the records, it is clear that the Assessing Officer, who is the statutory authority responsible for determining the tax liability of the dealer, was not given an opportunity to examine and verify the documents produced by the dealer during the appellate proceedings. It is



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also an admitted fact that the first Appellate Authority, after considering the materials then available, remanded the matter to the Assessing Officer with specific directions to verify the dealer's accounts, examine the supporting documents, and grant the dealer a personal hearing before completing the assessment. The purpose of the remand was to ensure that the assessment was made in accordance with law and based on properly verified facts.

12. However, despite the remand, the Tribunal entertained the second appeal and partly allowed the dealer's claim by accepting the explanations and documents produced by the dealer, without giving the Assessing Officer an opportunity to examine or verify those materials. Entertaining a second appeal in a matter that was remitted only for fresh consideration, and accepting the dealer's version without verification, is contrary to the settled principle that a remand is meant to enable the lower authority to reconsider the matter.

13. In the present case, the Tribunal failed to consider the admitted position that only part of the dealer's records had been produced earlier and that several documents still required



verification. By accepting the dealer's explanation without allowing the Assessing Officer to examine the newly produced records, the Tribunal acted in violation of the principles of natural justice and exceeded the scope of the remand, thereby rendering its order legally unsustainable.

14. On consideration of the substantial questions of law, it is evident that the Tribunal ought not to have entertained the second appeal and proceeded to adjudicate the factual issues when the first Appellate Authority had already set aside the assessment and remanded the matter for fresh consideration. Once the assessment order was set aside and the matter was remitted with specific directions to the Assessing Officer to verify the records and afford opportunity to the dealer, the Tribunal could not have assumed the role of the Assessing Authority and recorded findings on facts by relying upon documents produced at the appellate stage. The Tribunal could not have decided the appeal against the Revenue by accepting the dealer's explanation without giving the Assessing Officer an opportunity to examine and verify the materials. Such an approach is contrary to settled principles



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relating to appellate jurisdiction and violates the principles of natural justice. By bypassing the remand proceedings and deciding the matter on merits, the Tribunal exceeded its jurisdiction and rendered the impugned order legally unsustainable.

15. In view of the above facts and the settled legal position, the substantial questions of law are answered in favour of the Revenue. The Assessing Officer must be given full opportunity to examine the dealer's records, verify the documents produced, and determine the tax liability strictly in accordance with law. Any levy of tax or penalty can be made only after proper verification of the records. Consequently, the impugned order of the Tribunal dated 11.12.2003, insofar as it partly allowed the dealer's appeal and deleted the penalty, is set aside. The matter is remitted to the Assessing Officer for fresh consideration. The Assessing Officer shall issue notice to the dealer/assessee, grant full opportunity to produce all relevant records, verify the same, and determine the liability in accordance with law. Upon such verification, the Assessing Officer shall be entitled to levy tax and penalty under the



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provisions of the Tamil Nadu General Sales Tax Act, 1959, if suppression of turnover is established. The revision petition filed by the Revenue is accordingly allowed. No costs.

(P.V.,J) (L.V.G.,J)
29.01.2026

Index: Yes/no

Speaking Order: Yes/no

Neutral Case Citation: Yes/no

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To

- 1.Tamil Nadu State Sales Tax Appellate Tribunal (AB),
Madurai.
- 2.The Appellate Assistant Commisioenr (CT),
Madurai.
- 3.The Deputy Commercial Tax Officer,
Thirupparankundram Circle.
4. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J

and

L.VICTORIA GOWRI, J

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Pre-delivery Order
in T.C.(MD).No.15 of 2013

Order pronounced on 29.01.2026