

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN  
and  
THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

Tax Case (Revision) No.1846 of 2008

Naidu Hall & Sons

No.96, Pondy Bazaar, T.Nagar

Chennai-600 017.

..

Petitioner

versus

The State of Tamil Nadu

represented by the Commercial Tax Officer

T.Nagar (North) Assessment Circle

No.46, Greenways Road

Chennai-600 028.

..

Respondent

PRAYER: Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Chennai-600 104 dated 05.10.1999 in T.A.No.91/96 and T.M.P.No.260/96 arising out of order of the Appellate Assistant Commissioner (CT) III, Madras in Appeal No. and Year 77/95 order dt.7.8.96 against the order of the Commercial Tax Officer T.Nagar (North), Assessment Circle in TNGST/117501/90-91 order dt. 8.6.92.

For petitioner

: Mr.N.Inbarajan

For respondent

: Mr.Manoharan Sundaram  
Government Advocate (Taxes)

ORDER

(Order of the Court was made by CHITRA VENKATARAMAN, J.)

The assessee is on revision as against the order of the

Tribunal relating to the assessment year 1990-91, raising the following substantial questions of law:

- (i) Whether the Sales Tax Appellate Tribunal has committed an error of law by omitting to consider relevant evidence and by rendering findings based on no evidence?
- (ii) Whether the Sales Tax Appellate Tribunal has committed an error of law in examining the order before it as a Court of Judicial Review instead of a fact finding body?

2. It is seen from the facts herein that on 09.10.1990, there was an inspection conducted at the business premises of the assessee. The assessee is engaged in the manufacture and trading of readymade garments and it also sells clothes as such, both intra-State and inter-State.

3. At the time of inspection, the Inspecting Officials found the following defects:

1. No manufacturing account in Form XXX or in any other Form for the assessee's own manufacturer of blouse, bra and petty coat;
2. No accounts such as Delivery Challans for inter-Branch transfer of goods from Factory to Branches, Main Office and godown vice versa;
3. No separate stock accounts for the goods held at the godown, Head Office and Branch are maintained;
4. Export sales against Form H were effected but no records to that effect (for Rs.21,913.00 in May, 90) were produced for verification, even though the assessee had claimed exemptions on this in the monthly returns.

4. On verification of the actual stock taken with that of opening stock, purchases and sales, the Inspecting Officials noted stock variation of Rs.1,84,140/-. Based on the results, the Assessing Officer initiated assessment proceedings and worked out the difference of stock as follows:

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Opening stock of cloth	...	Rs. 2,64,170.00
Add: Purchases from 01.04.90 upto the time of inspection fabric as per statement	...	Rs.93,80,115.00
		-----
Total		Rs.96,44,285.00
Less: Stock of raw materials cloths and works-in-progress	...	Rs. 6,80,118.00
		-----
		Rs. 89,64,167.00
Add: Opening stock of readymade goods (as on 01.04.90) (Trading account as per 31.03.90)	...	Rs. 36,01,417.00
		-----
Opening stock (manufactured) finished	...	Rs.1,25,65,584.00
Add: Purchases of readymade	...	Rs. 8,49,086.00
		-----
Total	...	Rs.1,34,14,670.00
Add: G.P. 20%	...	Rs. 26,82,934.00
		-----
Less: Sales turnover of taxable goods (as per reconciliation statement).	Rs.1,60,97,604.00	
	...	Rs. 74,92,419.00
		-----
Net	...	Rs. 86,05,185.00
Less: Profit at 20%	...	Rs. 14,34,197.00
		-----
Stock that should be	...	Rs. 71,70,988.00
Less: Actual stock of finished goods found at the time of inspection	...	Rs. 25,36,344.00
		-----
Difference noticed	...	Rs. 46,34,644.00
		-----

The Officer proposed equal time addition as well as levy of penalty. The aggrieved assessee filed its reply and admitted the fact that it had not maintained the manufacturing account; nevertheless, it was contended that it was maintaining inventories and opening and closing stock, both on the materials purchase locally as well as from inter-State purchase of readymade garments, sale of cloth as well as sale of readymade garments. It contended that considering the manufacture of huge

volume of under-garments of different sizes, dimensions and designs, it was not possible for the assessee to maintain a manufacturing account of the stock account.

5. As regards the allegation as noted in the inspection report in respect of the stock variation at Rs.1,84,140/-, the assessee submitted that the Department had not allowed the assessee to verify the accounts before they could make any statement and the proposal now made as though there was a huge stock variation at Rs.46,34,644/- was also not based on any materials. Pointing out to the flaw in the analysis of the Officer, the assessee submitted that both the Officer as well as the Inspecting Officials had not considered the accounts in the proper perspective and that as per the accounts, the difference would work out only to a sum of Rs.3,29,116/-. Even for that, the assessee stated that the profit margin adopted uniformly for cloth as well as readymade sale was not correct and that there was no inventory taken on the consumables and that the sales of readymade garments made on 09.10.1990 were not taken into consideration. In the circumstances, the assessee contended that there was no stock variation at all. The Assessing Officer, however, rejected the contention of the assessee and arrived at the total turnover at Rs.2,94,16,960/- for making equal addition for probable omission at Rs.46,34,644/- on the stock noticed as per the working furnished. The assessee went on appeal before the First Appellate Authority.

6. On a perusal of the accounts, the First Appellate Authority pointed out that the Inspecting Officials had not correctly adopted the sales figure and had not taken into consideration the sale of cloth upto the time of inspection, though the relative pages were duly signed by the Inspecting Officer. Hence, the stock variation arrived at Rs.1,84,140/- was not correct. Thus, on going through the books of accounts, the First Appellate Authority pointed out to the actual sales at the time of inspection of cloth and readymade garments at Rs.1,06,55,646/- (Rs.31,63,227/- + Rs.74,92,419/-) which was posted subsequently pending the stock purchase and sales and the balance of stock was worked out as under:

	Cloth	Readymade	Consumables
Opening stock	Rs. 2,64,170.00	Rs.36,01,417.00	Rs.2,24,250.00
Purchases	Rs.72,52,553.00	Rs. 9,59,954.00	-
	Rs.75,16,723.00	Rs.45,61,371.00	Rs.2,24,250.00



Grand total of the above	...	Rs.1,23,02,344.00
Sales upto the time of inspection now arrived:	Rs.1,06,55,646.00	

Less: 20% Gross Profit		
as per book :	Rs. 17,75,941.00	
	-----	..Rs. 88,79,705.00
Stock that should be	...	Rs. 34,22,539.00
Actual stock available	...	Rs. 32,16,462.00
Stock difference now arrived	...	Rs. 2,06,177.00
		-----

7. The First Appellate Authority further pointed out that according to the accounts, the assessee had given the purchase of cloth and readymade garments at Rs.82,12,507/- before the inspecting officials (Cloth - Rs.72,52,553/- and Readymade - Rs.9,59,954/-), as against the figure given before the Enforcement Wing Officers at Rs.93,80,116/-. Thus, there is a difference of Rs.11,67,609/-. Since the assessee could not reconcile this figure, taking the ratio of purchase of cloth and readymade garments at 88:12, the difference was thus accordingly apportioned to the turnover and thereby stock variation was arrived at Rs.3,46,290/-. The First Appellate Authority confirmed the equal time addition and the suppression was estimated at Rs.6,92,580/-.

8. As regards the disallowance of second sales exemption at Rs.4,49,511.87, on verification of the sales register, the First Appellate Authority set aside the assessment. Considering the relief granted, penalty levied was also pro-rata reduced.

9. Aggrieved by this, the Department went on appeal before the Sales Tax Appellate Tribunal by way of Cross Appeal and the assessee went on appeal before the Tribunal as against the confirmation of the assessment on the alleged stock difference and the equal addition made. The Tribunal considered the contention of the assessee as well as the Revenue in the respective appeals and ultimately dismissed the assessee's appeal and partly allowed the enhancement portion.

10. A perusal of the order of the Tribunal shows that while disagreeing with the reasoning of the Appellate Assistant Commissioner, it pointed out that the Appellate Assistant Commissioner's stock tally proceeded on the premise that both the Inspecting Officer and the Assessing Authority failed to take

into consideration the sale of cloth at the time of inspection and arrived at the sale of cloth for the value of Rs.25,05,549/-. The Tribunal viewed that the assessee had not maintained production-cum-stock account. The cloth required for the purpose of stitching of articles alone were taken into account for the purpose of computing the stock of finished goods. The Tribunal viewed that the First Appellate Authority committed an error in viewing that the Officer did not take into consideration the sale of cloth and thus proceeded to apportion the unreconciled purchase turnover towards sale of cloth and sale of readymade goods. Thus, the Tribunal held that the Appellate Authority's view was not based on materials. It viewed that the Assessing Officer's estimate was based on pure facts according to the books of accounts. Thus, the Tribunal upheld the stock variation as stated in the assessment at Rs.46,34,644/- as well as further addition of Rs.46,34,644/- towards probable omission.

11. As regards the disallowance on the claim of second sales and estimate of first sale by the Assessing Officer, the Tribunal pointed out that the assessee had not maintained separate stock account for taxable and non-taxable goods. In the circumstances, the formula adopted by the Assessing Officer was well within the law declared by this Court. Accordingly, it confirmed the order of the Assessing Officer.

12. However, as regards the levy of penalty, the Tribunal held that restoration of penalty at 50% would meet the ends of justice. Thus, while setting aside the order of the First Appellate Authority and restoring the order of the Assessing Officer, the Tribunal allowed the enhancement petition; but however, the penalty was reduced to 50%. Aggrieved by this, the assessee is on appeal before this Court as against the order of the Tribunal.

13. Learned counsel appearing for the assessee placed before us the sales details of readymade garments as well as cloth upto the date of inspection as well as the purchase of readymade garments and cloth, locally and inter-State, upto the date of inspection as well as to the close of the financial year. He submitted that while the Inspecting Officials arrived at the stock variation at Rs.1,84,140/-, which, according to the assessee itself, is not based on the correct figures, the assessment done by the Officer, treating the stock variation at Rs.46,34,644/-, is also against the account entries; as such, the finding on both were incorrectly arrived at by the Appellate Authorities. The assessee contended that there was no stock variation at all for the purpose of any assessment in this case. He submitted that when the account books were all there before the Inspecting Officials and they were seized and the sales and

purchase were noted, the difference found in the stock by the Inspecting Officials was only on account of the improper stock taking as well as the failure to get into the accounts relating to purchase and sales. The assessee submitted that it purchased stock both locally and from outside the State and it also purchased readymade garments. The purchased cloth materials were sold as such, as well as used for the manufacture of readymade garments. Given the nature of different manufactured items, he submitted that there was always a difficulty in maintaining the manufacturing account, but then, it did not mean that there were no accounts at all, reflecting the true state of affairs.

14. Taking us through the accounts reconciliation statement as was considered by the Appellate Authority, learned counsel pointed out to the mistake in the reconciliation statement made at the time of inspection that when the total sales of readymade garments as well as cloth upto 09.10.1990 i.e., the date of inspection, was only Rs.1,06,55,645.99, the inspection noted sales turnover of readymade garments upto 9<sup>th</sup> September, 1990. He also pointed out that the total purchase of readymade garments as well as cloth upto 08.10.1990 was to the tune of Rs.82,12,236.53. In the circumstances, the contention of the Revenue that the purchase upto the date of inspection of fabric of Rs.93,80,115/- is not borne out by the accounts. Thus, the difference arrived at by the Assessing Officer to a sum of Rs.46,34,644/- was not correct; the total sales made by the assessee in respect of fabric as well as readymade garments was Rs.74,92,419/-. So too the purchase of fabric taken was Rs.93,80,115/-.

15. He further pointed out to the failure to take note of the other materials available on the use in the manufacture of readymade garments. Consequently, he submitted that the Tribunal committed a serious error in ignoring the account entries to uphold the order of assessment.

16. Countering the said statement, learned Standing Counsel appearing for the Revenue defended the assessment order made and in turn, the Tribunal's order upholding the assessment.

17. Heard learned counsel appearing for the assessee as well as the learned Standing Counsel appearing for the Revenue and perused the materials placed on record.

18. A perusal of the inspection report reveals that as a manufacturer, the assessee had not maintained the manufacturing account, nor had it shown the purchase of materials made locally as well as from other States which are sold in the State either as fabric or as readymade garments. Given the fact that the assessee is not just a trader alone, but a manufacturer too, the



basic document that one has to maintain, however difficult it might have been, is the manufacturing account, since the verification as to the correctness of the claim starts only from thereon. Thus, the admitted case that the assessee had not maintained the manufacturing account, clearly pointed out to the difficulty in arriving at the stock variation.

19. It is a matter of record that the inspection resulted in the books of accounts being taken by the Revenue. It is also a matter of record that the assessee had maintained the books of accounts indicating purchase of materials as well as readymade garments, apart from other materials, which are required in making readymade garments. Going by the details available, particularly as regards the purchase of cloth and readymade garments and the sales thereon, a fact which is not denied by the Revenue too, it is evident that in the case of sale of readymade garments upto 09.10.1990, the turnover itself is to the tune of Rs.81,50,097.34. As far as cloth is concerned, the turnover on sales is Rs.25,05,548.65, totaling to a sum of Rs.1,06,55,645.99. On a reading of the details given, it is evident that what had been taken at the time of inspection was only with reference to the sale of readymade garments, that too, upto the sales made as on 30<sup>th</sup> September 1990. When we look at the purchase turnover on cloth and readymade material upto the date of inspection, the total turnover comes to Rs.82,12,236.53. The Assessing Authority as well as the Inspecting Officials noted it as Rs.93,80,115/-. Taking the difference between the stock of cloth and readymade garments at Rs.11,67,609/-, the First Appellate Authority pointed out that the assessee could not reconcile this. Consequently, taking note of the ratio of purchase of cloth and readymade garments, a sum of Rs.11,67,609/- was the stock difference arrived at. Thus, taking the stock of cloth and readymade garments along with the consumables at Rs.1,23,02,344/-, the First Appellate Authority took note of the sales of readymade garments as well as cloth as found in the books of accounts at Rs.1,06,55,646/- and reduced book profit at 20% and arrived at the stock difference at Rs.34,22,639/-. The Inspecting Officials noted the available stock at Rs.32,16,462/-. The First Appellate Authority took the actual stock available at Rs.32,16,462/- and arrived at the stock difference at Rs.2,06,177/-. Adding the proportion at Rs.11,67,609/-, the suppression was arrived at Rs.3,46,290/-. As far as the adoption of the actual stock available taken at Rs.32,16,462/- is concerned, we find from the inspection report submitted that the stock of finished goods found at the time of inspection was Rs.25,36,344/-. On a reading of the details furnished before us, we find difference between Rs.32,16,462/- and Rs.25,36,344/- representing the actual stock of finished goods which is on account of other materials in the form of consumables and that,



leaving that out for the purpose of arriving at the actual stock difference, the Appellate Authority should have arrived at a sum of Rs.8,86,295/- as against Rs.3,46,290/-. In the light of the details thus available before us and which were very much available before the Tribunal as well as before the other Authorities, we do not find any justifiable ground to accept the reasoning of the Tribunal, which fails to take note of the accounts details. Even though the Tribunal pointed out that the Assessing Authority's assessment is based on facts according to the books of accounts, we do not find any justifiable ground to accept the working done by the Assessing Officer. The Books of Accounts which were produced before the Assessing Officer as well as before the Inspecting Officers were initiated by the authorities concerned and it is not the allegation of the Revenue that the entries were made subsequent to the date of inspection, for inference thereon to be drawn adversely against the assessee. Since account entries remain as they are, we do agree with the assessee's contention that the Assessing Authority committed an error in arriving at the actual stock variation. As already noted, variation was arrived at, taking note of the sale in readymade garments upto September, 1990 whereas, the investigation was made on 09.10.1990. When the Revenue admits that the materials purchased could not be said as with reference to sale of readymade garments alone, in fairness to the claim of the assessee, the Assessing Officer as well as the Tribunal should have adverted to this fact while arriving at the stock variation. In the circumstances, while confirming the reasoning of the Appellate Assistant Commissioner, we hold that in arriving at the stock difference, instead of Rs.32,16,462/- as unaccounted stock available, the Officer should have taken note of the stock of finished goods at Rs.25,36,344/- to arrive at the stock difference for the purpose of working out the liability. Except for this modification, we confirm the order passed by the Appellate Assistant Commissioner. Thus, while disagreeing with the view expressed by the Tribunal, we set aside the order of the Tribunal and thereby remand the matter back to the Assessing Officer to arrive at the stock difference, taking the actual stock at Rs.25,36,344/- and the stock difference at Rs.34,22,639/- and assessment order passed thereon.

20. In arriving at the penalty under Section 12(3)(b) at 50%, the Assessing Officer shall, however, exclude the additional tax portion, since the provision regarding the levy of penalty on additional sales tax was introduced in the statute book in the year 1997. Hence, the same was not available during the material assessment year 1991.

21. As regards the equal time addition for probable omission, we uphold the order of the Tribunal to this extent of

the actual suppression. So too the penalty arrived at 50%. With the above observation, this Tax Case stands dismissed.

Sd/  
Deputy Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Asst.Registrar,  
The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench)  
Chennai-104.
2. The Appellate Assistant Commissioner (C.T) III, Madras-108.
3. The Commercial Tax Officer, T.Nagar (North) Assessment Circle  
No.46, Greenways Road, Chennai-28.

+lcc to Spl. Govt. Pleader (T) Sr 53041  
+lcc to Mr.N.Inbarajan, Advocate Sr 52561

MRD(CO)  
km/1.11.

Tax Case (Revision) No.1846 of 2008

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