**(2015) 06 MAD CK 0037**

**In the Madras High Court**

**Case No :** Tax Case (Revision) No. 36 of 2015

State of Tamil Nadu APPELLANT

Vs

Ashok Leyland Limited RESPONDENT

**Date of Decision :** 05-06-2015

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b), 2(r), 3(4)

**Citation :** (2015) 84 VST 179

**Hon'ble Judges :** R. Sudhakar and K.B.K. Vasuki, JJ.

**Bench :** Division Bench

**Advocate :** Kanmani Annamalai, Additional Government Pleader, for the Appellant

## Judgement

R. Sudhakar, J.—This tax case (revision) is filed by the Revenue as against the order of the Tamil Nadu Sales Tax Appellate Tribunal raising the following substantial questions of law:

"(1) Whether the honourable Tribunal is correct in holding that the income received by way of premium on sale of REP licences alone is taxable as ''turnover'' as against the aggregate amount for which the said goods were sold as per the definition of the term ''turnover'' as laid down in section 2(r) of the TNGST Act, 1959?

(2) Whether the honourable Tribunal is correct in overlooking the specific orders of this honourable High Court in the decision reported in P.S. Apparels Vs. Deputy Commercial Tax Officer, T. Nagar East Assessment Circle, Madras--> in relation to levy of penalty for the assessment years beyond 1992-93 under section 12(3)(b) of the TNGST Act, 1959?"

The brief facts of the case are as follows:

"The assessment in this case relates to the assessment year 1993-94. The respondent/assessee is engaged in the business of manufacturing and selling of heavy duty Leyland vehicles, engine-engine spares and chassis, etc. Originally they were assessed on a total and taxable turnover for the said assessment year. On verification of the records, the assessing officer found that the assessee had surrendered REP licence to Reserve Bank of India for Rs. 1,51,76,000 and were assessed to four percent, instead of eight percent., since Reserve Bank of India was not Government Department and it is an independent body. Hence, the assessing officer proposed to revise the assessment assessing the turnover on the surrender of REP licence at eight percent and proposed to impose penalty under section 12(3)(b) of the Tamil Nadu General Sales Tax Act along with 15 percent. surcharge and five percent, additional surcharge. Hence, notice was issued to the assessee, for which the assessee had filed objections stating that the reopening of assessment was time-barred and the surrender of licence not amounted to sale. They also stated that they had already paid eight percent, tax on the receipt of surrender of REP licence and no penalty would be leviable. Overruling the objections filed by the assessee, the assessing officer confirmed the proposal made in the notice."

2. Aggrieved by the said demand, the assessee preferred an appeal before the Appellate Assistant Commissioner, who, on facts, verified the assessee''s letter dated April 8, 2002, available at page 479 of volume IV of the assessment file and held as follows:

"5. (4) At this juncture, the learned counsel for the appellants pointed out that the assessing authority wrongly adopted the turnover as Rs. 1,51,76,000 as against the correct turnover of Rs. 22,58,840. In support of his contention the learned counsel for the appellants produced the copy of the balance sheet and invited attention to page 21, wherein the miscellaneous income was shown as Rs. 274.21 lakhs, which included the REP licence turnover of Rs. 22,58,840. Further the learned counsel for the appellants stated that the above fact was already brought to the notice of the assessing authority by the appellants in their letter dated April 8, 2002, available at page 479 of volume IV of the assessment file.

5. (5) I therefore find that the correct turnover for assessment is only Rs. 22,58,840 and that the assessing authority is not correct in having adopted the turnover of Rs. 1,51,76,000. Consequently, the assessment made by assessing authority is confirmed on the turnover of Rs. 22,58,840 and the remaining amount of Rs. 1,29,17,160 and tine assessment thereon are hereby deleted."

3. Aggrieved by the order of the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Tribunal. The Tribunal, inter alia, determined this issue as Point No. 2. and answer the same at paragraph No. 11, which we extract below as such for better clarity:

"11. On perusal of the order of the first appellate authority, it is seen that the appellate authority verified the documents such as copy of balance sheets of the appellant-company and found that the turnover of REP license was only Rs. 22,58,840 and held that the correct turnover for assessment relating to the REP licence is only at Rs. 22,68,840. The learned counsel also produced the copy of annual accounts for the year 1993-94 of the appellant-company wherein the miscellaneous income was shown at Rs. 274.21 lakhs, which includes the turnover for REP licence was sold within the State to a sum of Rs. 22,58,840 and the proposal to levy tax at higher turnover of Rs. 1,51,76,000 was not correct. In the revision order, the assessing authority rejected the contention of the appellant on the ground that already in the original. order, the amount of Rs. 1,51,76,000 was assessed. Therefore, the order of the first appellate authority restricting the turnover on the basis of the documents is found to be correct. The contention of the learned State Representative is not sustainable with regard to disputed turnover of REP licence."

4. Aggrieved by the order of the Tribunal, the Department is before us in this revision.

5. The learned Additional Government Pleader appearing for the petitioner submits that for the purpose of levy of tax under section 3(4) of the TNGST Act, the definition of "turnover" in terms of section 2(r) would mean the aggregate amount, for which the goods are bought and sold. Hence, the assessing officer is correct in assessing the turnover and imposing penalty.

6. Heard learned Additional Government Pleader appearing for the petitioner and perused the materials placed before this court.

7. According to the Department, the assessee had surrendered REP licence to the Reserve Bank of India and that the turnover was Rs. 1,51,76,000, whereas the appellate authority and the Tribunal have held that the aggregate value insofar as the surrender of REP licence was Rs. 22,58,840. The rate of tax leviable on surrender of REP licence at eight percent, is not in dispute. The first appellate authority, on facts verified the assessee''s letter dated April 8, 2002 available at page 479 of the volume 4 of the assessment file and held that the correct turnover for assessment was only Rs. 22,58,840, which was confirmed by the Tribunal.

8. On a conspectus of two orders, viz., the first appellate authority as well as the Tribunal, it is clear that factually both the authorities have found that the turnover on surrender of REP licence was only Rs. 22,58,840. In the absence of any record or material to the contrary, we are unable to countenance the argument of the learned Additional Government Pleader appearing for the State that there was an error in levy of tax in respect of REP licence surrendered to the Reserve Bank of India. Being pure question of fact and both the appellate authorities verified the records and arrived at a conclusion, we find no question of law much less any substantial question of law arises for consideration in this revision. Accordingly, this tax case (revision) stands dismissed. No costs.