IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 29.06.2026	Delivered On: 14.07.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA

T.C.No.40 of 2014
& M.P.No.1 of 2014

M/s.Sayar Jewellers.,
Represented by its Proprietor-D.Dharmichand,
No.376/120, Car Street,
Tiruvannamalai,
Tiruvannamalai District. … Revision Petitioner
Cause title accepted vide order of Court dated 21.01.2014 made in M.P.No.1/13 in T.C.SR.No.56182/2013.

vs.

The State of Tamil Nadu
Represented by the Joint Commissioner (CT),
Vellore Division,
Vellore. … Respondent

Prayer: Tax Case (Revision) has been filed under Section 38 of TNGST Act, 1959, to revise the order of Sales Tax Appellate Tribunal (Main Bench), Chennai dated 31.10.2012 and passed in Tribunal Appeal No.12 of 2009.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mr.R.Sethuprabhakaran
Government Advocate

ORDER

The Tax Case (Revision) is filed by the Trader, being aggrieved by the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) in T.A.No.12 of 2009, dated 31.10.2012.

2. The revision petitioner is a trader in gold and silver jewellery, carrying on business within the assessment circle of the Commercial Tax Officer, Tiruvannamalai. For the assessment year 2005-2006, the trader reported a total turnover of Rs.19,88,066/- and taxable turnover of Rs.14,32,099/-. The account was checked and found suppression of purchases, excessive stocks and suppression of sales. The revised return filed by the trader in the month of September, 2007 after the surprise inspection of its premises by the Income Tax Officers on 13.09.2005, was taken into consideration by the Assessing Officer during the course of checking the accounts. The unaccounted stock found during the Income Tax Department's inspection was later declared to the Sales Tax Department by way of revised return. Hence, the Assessing Authority held that, but for the Income Tax Department inspection and the unravelling of the unaccounted stock, the trader would not have disclosed the additional turnover by filing the revised return. Therefore, the Assessing

Officer concluded that there was suppression of purchases as well as sales and levied tax, equal additions and penalty after determining the total turnover and taxable turnover, as under:

Total Turnover Determined		Rs.5,07,45,693/-
Taxable Turnover Determined		Rs.4,82,63,723/-
	Tax Rs.	Surcharge Rs.
Due	7,70,077/-	38,503/-
Paid	1,22,300/-	5,628/-
Balance	6,47,277/-	32,875/-

A Notice in Form "B" are issued.

Levy of Penalty under Section 12(3)(b):

Tax and Surcharge due after deducting the tax and surcharge on estimated suppression.

	Tax Rs.	Surcharge Rs.	Total Rs.
Due	3,98,178/-	19,907/-	4,18,085/-
Paid	1,22,800/-	5,628/-	1,28,428/-
	2,73,378/-	14,279/-	2,89,657/-

% of Balance 69%

12.5% of Penalty proposed under Section 12(3)(b) of the Act Rs.3,62,071/-.

A Notice in Form "54" is issued.

3. Aggrieved by the assessment order dated 31.03.2008, the trader preferred an appeal before the Appellate Assistant Commissioner (CT), Vellore, disputing the assessment order as under:

	Nature of Dispute	Turnover involved (Rs)	Tax & SC/Penalty involved (Rs)
A.	Purchase turnover of Gold declared by the appellants based on the excess stock noticed at the time of Income Tax Department Search on 13.09.2005	9130980	95876
B.	Equal Time Addition for probable other omissions with reference to "A" above	9130980	95875
C.	Actual Sales suppression arrived at with reference to "A" above by adopting 43.78% Gross Profit	13128523	275699
D.	Equal Time Addition for probable other omissions with reference to "C" above	13128523	275699
E.	Purchase turnover of Silver declared by the appellants based on the excess stock noticed at the time of Income Tax Department Search on 13.09.2005.	837890	8798
F.	Equal time Addition for probable other omissions with reference to "E" above	837890	8798
G.	Actual Sales suppression of Silver Article arrived at with reference to "E" above by adopting 4378% Gross Profit	240944	10121
H.	Equal Time Addition for probable other omissions with reference to "G" above	240944	10121
I.	Penalty imposed under Section 12(3)(b)		362071
			1143058

4. The Appellate Authority dismissed the appeal of the trader holding that, the very fact that unaccounted stocks of gold and silver jewels and silver articles valued at Rs.99,68,870/- were unearthed at the time of surprise search of the trader's place of business by the Income Tax Department is adequate to negative the plea of the trader that he had disclosed the stocks in the revised return. If the trader had maintained the true and complete accounts, there is no possibility for any stock difference. Furthermore, the stock difference noticed at the time of surprise inspection is not a solitary instance.

5. As against the dismissal of the appeal, the trader had taken up the matter on further appeal before the Sales Tax Appellate Tribunal questioning the order of the Assessing Officer as confirmed by the Appellate Authority. The tribunal, on considering the grounds of appeal filed by the trader, had formulated the following point to be decided:-

> *A. Whether the confirmation of assessment by the first appellate authority on the excess stock of Rs.82,00,000/- related to own old gold jewels and the excess of stock of gold jewels of Rs.9,30,980/- connected with repair and polishing is in order or not?*
>
> *B. Whether the confirmation of assessment made on the excess stock related to own silver jewels of*

Rs.8,20,341/- and on the excess stock of silver articles of Rs.17,549/- by the first appellate authority is in order or not?

C. Whether the confirmation of assessment made on sales estimation of Rs.1,31/28,523/- @ 2% related to gold jewels and the Rs.2,40,944/- @ 4% related to silver articles by the first appellate authority is in order or not?

D. Whether the assessment made on equal time addition for purchase omission of Rs.91,30,980/- @ 1% connected with excess stock gold jewels and on Rs.8,37,890/- @ 1% related in the silver jewels, confirmed by the first appellate authority are in order or not?

E. Whether the equal time addition of Rs. 1,31,28,523/- @ 2% for sales suppression on gold jewels and Rs. 2,40,944/- @ 4% for sales suppression on silver -articles confirmed by the first appellate authority are in order or not?

F. Whether the penalty of Rs; 3,62,071/- levied under section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 confirmed by the first appellate authority is in order or not?

6. After detailed discussion, the Tribunal partly allowed the appeal, interfering with the equal addition on the estimated suppression the reduced from equal addition from 100% to an addition of 10%. In all other aspects, it confirmed the order of the Appellate Authority. The conclusions of the Tribunal for each of the points are as below:-

Point A: Under this circumstances, it is felt that the observation of the first appellate authority in sustaining the assessment made on Rs.82,00,000/- and on Rs.9,30,980/- are in order and no valid grounds to interfere with the observation of the first appellate authority. Therefore the contentions of the appellants are rejected and the assessment confirmed by the first appellate authority on Rs.82,00,000/- and on Rs.9,30,980/-are sustained.

Point B: The order of the first appellate authority in confirming the assessment made on Rs.8,20,341/- @ 1% and on Rs.17,549/- @ 1% is in order and hence the order of the first appellate authority does not warrant any intervention and this point is answered accordingly.

Point C: In this situation we find no valid reason to interfere with the confirmed order of the first appellate authority on sales estimation of Rs.1,31,28,523/- @ 2% and on Rs.2,40,944/-. Therefore the contentions of the appellants are rejected and the order of the First Appellate Authority in sustaining the.-assessment made in the sale estimation of Rs.1,31,28,523/- @ 2% and on Rs.2,40,944/- @ 4% is confirmed and this point is answered accordingly.

Point D: Therefore, we feel that an adhoc addition at 10% to the turnover of Rs.91,30,980/- @ 1% Rs.1,31,28,523/- @ 2% Rs.8,37,890/- @ 1% and Rs.2,40,914/- @ 4% would be justifiable. In view of this the equal time additions of Rs.91,30,980/- @ 1%, Rs.1,31,28,523/- @ 2%, Rs.8,37,890/- @ 1% and Rs.2,40,944/- @ 4% confirmed by the first appellate authority are set aside and reduced to an adhoc addition of 10% on estimation instead of equal addition is fixed as addition for defects. Thus these points are answered accordingly.

Point E: Thus it is noticed that the excess stock of gold and silver jewels had not been disclosed by the appellants/assessees either in the regular accounts or in the regular monthly returns till 13.9.2005. Therefore the contention of the learned counsel that the excess stock was brought into accounts could not be considerable, and treated as already available in the accounts. Therefore the contention of the learned counsel that the purchase suppression should be considered as suppression on presumption is not acceptable. A perusal of the assessment order dated 31.03.2008 clearly shows that the penalty of Rs.3,62,071/- has been properly levied as per the provisions and as per the explanations of the Section 12 (3)(b) of the Tamil Nadu General Sales Tax Act, 1959. Therefore, we do not find any need for intervention in the levy of penalty of Rs.3,62,071/- and on the order of the first appellate authority. Therefore, we are rejecting the grounds of the appellants/assessees, confirm the order of the first appellate authority in respect of the levy of penalty of Rs.3,62,071/- under section 12 (3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

7. After summarizing the point for consideration, the Sales Tax Appellate Tribunal modified the assessment order by partly allowing the appeal.

> *(i) The dispute relate to purchase suppression of gold jewels of Rs.91,30,980/- @ 1% and the resultant sales estimation of Rs.1,31,28,523/- @ 2% and the purchase suppression of silver jewels of Rs.8,37,890/- @ 1% and the resultant sales estimation of silver articles Rs.2,40,944/- @ 4% are dismissed.*
>
> *(ii) The disputes related to equal-time additions of Rs.91,30,980/- @ 1% Rs.1,31,28,523/- @ 2%*

Rs.8,37,890/- @ 1% Rs.2,40,944/- @ 4% are modified as Rs.9,13,098/- @ 1% Rs;13,12,652/- @ 2% Rs.83,789/- @ 1% and Rs.24,094/- @ 4% respectively.

(iii) The appeal relates to the levy of penalty of Rs.3,62,071/- levied under section 12(3)(b) of the TNGST Act is dismissed.

8. The trader, being aggrieved, has preferred the present revision under Section 38 of the TNGST Act. At the time of admitting the revision petition, the following substantial questions of law were framed for consideration:-

1. Whether in the facts and circumstances of the case, the Tribunal was justified in having held that purchase suppression and resultant sales estimation suppression is exigible to levy of tax when the assessee had brought the same into their accounts subsequent to inspection of their premises on 13.09.2005 by the Income Tax officials?

2. Whether in the facts and circumstances of the case, the Tribunal was right in having confirmed the purchase suppression and consequential sales estimation in view of the decisions rendered by this Hon'ble Court in (2011) 42 VST 166 (Mad.), (2010) 28 VST 250(Mad) and the instructions issued by the Special Commissioner & Commissioner of Commercial Taxes, Madras in J2/67009/89 dated 16.08.1989?

3. Whether the Tribunal was correct in having confirmed the levy of penalty under Section 12(3)(b) in view of the Explanation clause appended to Section 12(3)(b) of the TNGST Act, 1959?

9. The primary contention of the Learned Counsel for the revision petitioner/trader is that the trader had indeed filed a revised return disclosing the entire turnover detected by the Income Tax Officials. While so, the voluntary disclosure of turnover through the revised return not been taken into consideration by the Department. Further, it is contended that the assessment of alleged suppression is only on generalities of probabilities. The Tribunal failed to independently apply its mind in respect of the explanations offered by the trader regarding the alleged purchase suppression. The Tribunal failed to consider judgments which have held that subsequent accounting of transactions detected at the time of inspection will not amount to suppression. Though being the final authority on fact-finding, the Tribunal grossly erred in accepting the case of the Revenue without considering the facts and law in their proper perspective.

10. In support of the above submissions, the following judgments were relied:-

1. ***Jayalakshmi Oil Mills vs. State of Tamil Nadu*** reported in ***2012 (2) TMI 450***.
2. ***S.R.S.Industries vs. State of Tamil Nadu*** reported in ***2010 SCC Online Mad 6455***.
3. ***Ram Sun Fabi Techs vs. State of Tamil Nadu*** reported in ***2008 SCC Online Mad 1257***.
4. ***Appollo Saline Pharmaceuticals (P) Limited vs. Commercial Tax Officer (FAC) and others*** reported in ***2001 SCC Online Mad 1205***.
5. ***Nokia India (P) Ltd vs. Deputy Commissioner (CT)-IV, Large Tax Payers Union, Egmore, Chennai and others*** *reported in* ***2014 SCC Online Mad 8988***.

11. Per contra, Mr.R.Sethuprabhakaran, the Learned Government Advocate for the Department, submitted that suppression of purchases and admission of excess stock at the time of the inspection conducted by the Income Tax Officials is undisputed. The unaccounted stock came to be accounted, that too only partially in the revised return will not clear the cloud in the accounts of the trader, who had willfully suppressed the stock and only after the inspection by the Income Tax Department that suppression of stock to the tune of about one crore rupees came to light. The judgments of the Hon'ble Supreme Court as well as the High Courts does not grant complete immunity to the traders from equal additions and penalty in cases of suppression. If material is available, assigning reasons, the Assessing Authorities can levy equal additions and penalty. The equal addition may vary if the gravity of suppression is less or mitigated by subsequent disclosure and payment of tax. In the case in hand, the trader came forward to disclose additional turnover by way of revised return only after the unaccounted stock worth about one crore rupees was came to light during the Income Tax inspection. Therefore, the levy of Tax, Equal Addition and the Penalty are unassailable.

12. To buttress the above submissions, the Learned Government Advocate referred the unreported judgment of this Court rendered in ***M/s.Ratna Stores (P) Ltd., vs. The State of Tamil Nadu, Represented by the Joint Commissioner (CT), Chennai***, dated 13.06.2018, wherein the Court has said:

> *10. It is a settled proposition of law that the Supervisory Jurisdiction of the High Court is limited. The High Court does not sit in appeal over the judgment of the Tribunal. The High Court should not in normal circumstances interfere with the order of the Authorities*

below it unless and until, its non-interference would amount to a travesty of Justice.

11. The only question which falls for the consideration of this Court, is whether the addition of Rs.42,24,413/- on account of probable suppression was so unreasonable that it requires the interference of this Court.

…….

14. The view taken by the Tribunal is a probable view, and the High Court while exercising its revisionary jurisdiction should not substitute its own view to the view taken by the last fact finding Authority. In light of the above, we are of the view that there is no error in the decisions of the authorities below.

13. The sequence of events in this case which is very crucial, since the determination of willful suppression to impose equal addition and penalty, depends on it.

14. In the *Jayalakshmi Oil Mills* case, cited supra and relied by the trader, the Court upheld the levy of additional tax based on account of stock variation and on the basis of recovered slips. However, the Court deleted the equal addition made on the estimation for probable suppression, since the equal addition was only based on estimate that too probable suppression. It is only a guesswork. There is no material for making equal amount for probable suppression. A similar view taken by another Division Bench of this Court in *S.R.S. Industries* case, cited supra.

15. In the *Appollo Saline Pharmaceuticals (P) Ltd* case, cited supra and relied by the revision petitioner, the Division Bench of this Court, while considering levy of penalty based on best judgment assessment has observed,

> *"10. In respect of assessments which were properly made by way of best judgment assessment, and in which penalty has been levied, it was submitted that the authority has failed to consider the bona fides of the petitioner. It was submitted that the turnover had been disclosed in full, but a part of it had not been regarded as part of the taxable turnover by reason of bona fide belief that the assessee had entertained having regard to the earlier judgments of this Court, and therefore, penalty levied was wholly unwarranted. The levy of penalty without considering the bona fides of the petitioner cannot be sustained."*

16. In *Nokia India (P) Ltd.,* cited supra Single Judge Bench of this

Court following Jayalakshmi Oil Mills case, has held that,

> *48. As noticed above the assessing officer, stated that at the time of audit, the omission was disclosed. However, the assessing officer has failed to advert to the specific stand of the petitioner that the discrepancy was noticed prior to the audit by the Department and they suo motu disclosed the same to the audit and during the course of the audit, they had paid the entire tax along with interest. This in my view a very relevant factor, which should have weighed in the minds of the assessing officer, that on the date when the audit completed the inspection, the entire tax liability along with interest have been paid. Therefore the senior counsel for the petitioner is right in his submission that the petitioner is being taxed twice. The equal addition being in the nature of penalty, it does not automatically follow that in every case of non-disclosure, equal addition is warranted. This is precisely a view taken by the three Division Benches of this court cited supra. Therefore, this court is of the considered view that there is absolutely no justification for equal addition. Therefore, the equal addition made by the assessing officer is deleted.*

17. In all the cases cited by the revision petitioner, we find that the High Court has pointed out the omission to assign reasons for equal addition and the absence of additional material to probabilise willful suppression. In the *Nokia case*, the disclosure was before the audit inspection. Contrarily, in the case in hand, the disclosure was much after the Income Tax official inspection. The non-disclosure of purchases and the value of the unaccounted stocks were not on any guesswork, but based on materials collected during the Income Tax inspection and the revised return filed by the trader.

18. The Tribunal, after considering the explanation of the trader had modified the equal addition and reduced it to 10%. This shows independent application of mind and re-assessment of the facts by the tribunal. Having found from the documents that the suppression of purchases and, as a corollary, the suppression of sales, mere submission of revised return after the income tax department inspection is not sufficient to presume bonafide about the omission to maintain records of purchases and sales.

19. From the assessment order, we find on 13.09.2005, at the time of Income Tax Officials inspection, as per the stock book maintained by the trader, the gold stock was 21545.500 grams, whereas the Income Tax Officials found 39220.960 grams of gold jewels. Likewise, the silver stock as per the books maintained by the trader was 53.249 kg. Whereas, the Income Tax Officials found 144.398 kg of silver jewels. Against the excess stock of 17675.460

grams of gold, the trader, in the revised return, declared only 15873.300 grams as excess. Similarly, against 91.149 kg of excess silver jewels found at the time of Income Tax Department inspection, only 89.420kg declared to the department in the revised return. The excessive difference in stock, even after the revised return, could not get reconciled. Therefore, the assessment, addition and penalty being made following the principles laid in the Hon'ble Supreme Court Judgments, are found to be proper. We find no merit in the appeal.

20. The substantial questions of law answered as below:

1) The revised return filed subsequent to Income Tax inspection cannot be a protection blanket for the tax evaders. Even if the Trader pays the tax due based on its revised return, he has to necessarily show that the omission to disclose the true and correct accounts was not willful or intentional. Payment of tax subsequent to the inspection of the petitioner's premises may be taken as a reason for mitigating circumstance to levy less than equal addition, instead of equal addition.

2) *S.R.S.Industries vs. State of Tamilnadu: (2011) 42 VST 166(Mad)* and *Ram Sun Fabi Techs vs. State of Tamilnadu: (2010) 28 VST 250(Mad)* are held in favour of the assessee/taxpayer after ascertaining that no material available to add equal addition or to levy penalty. These two judgments may be a good precedents favouring a taxpayer who had disclosed the entire turnover truthfully after the inspection. It is not applicable to the revision petitioner, who even after the inspection had not made full and true disclosure in the revised return. To take advantage of the above mentioned judgments or the Circular J-2/67009 dated 16.08.1989.

3) The explanation clause appended to Section 12(3)(b) of the TNGST Act, 1959 prescribes a slab rate of penalty based on the turnover suppressed. In the present case, the assessee had failed to justify the suppression. The penalty, being imposed based on the quantum of suppression as per the best judgment of the Assessing Officer, no violation of the Act could be found.

21. In the result, all the substantial questions of law held against the revision petitioner taxpayer.

22. In fine, the Tax Case No.40 of 2014 stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(**Dr**. **G.JAYACHANDRAN, J.**) & (**N. MALA, J.**)
14-07-2026

Index :Yes.
Neutral Citation :Yes/No.
bsm

To,
1. The Joint Commissioner (CT),
Vellore Division,
Vellore.

2. The Sales Tax Appellate Tribunal (Main Bench),
Chennai.

Dr. G.JAYACHANDRAN, J.
&
N. MALA, J.
bsm

Pre-Delivery order made in
T.C.No.40 of 2014

Judgment delivered on
14-07-2026