(2010) 08 MAD CK 0295

In the Madras High Court

Case No : Writ Petition No. 38959 of 2006 and M.P. No. 1 of 2006

A. Neduncheliyan APPELLANT

Vs

The Joint Commissioner (SMR), Commercial Taxes RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 34

Citation : (2011) 40 VST 255

Hon'ble Judges : M.M. Sundresh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Haja Nazruddin, SGP(T), for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—This writ petition filed by the assessee seeks to challenge the order passed by the revisional authority exercising his powers u/s 34 of the Tamil Nadu General Sales Tax Act as it stood at the relevant point of time. The assessment year was 1994-95.

2. There was an inspection of the petitioner''s jewellary business premises on 19.01.1995. Certain slips were recovered at the time of inspection under D7. The present impugned order related to Slip No. 5. According to the Assessing authority, the slip No. 5 contains 8 items of jewels of different weights, for which there were no bills either by way of purchase or by way of sales. The Assessing Officer noted that though there were no item ware stock maintained in the stock book, the total weight was furnished in the stock book. Since there were no bills either towards purchase or sales, the Assessing Authority by rejecting the stand of the petitioner that the items noted in Slip No. 5 were for removing the gold jewels from the shop to the house for safe custody during the forthcoming Pongal holidays, made an estimation of the weight and further estimation of the value of the sales to an extent of Rs. 2,67,000/- and On such sale value, three times of addition was also made along with other sales omission noted and the

best of Judgment assessment was made.

3. On appeal before the Appellate Assistant Commissioner, while the estimation and the Best Judgment Assessment relating to all other slips covered by D7 were affirmed in respect of Slip No. 5, learned Appellate Assistant Commissioner took the view that all those jewels entered in Slip No. 5 were found available in the stock of the jewels gathered at the time of inspection on 19.01.1995, while Slip No. 5 was dated 14.01.1995. The Appellate Assistant Commissioner therefore held that the explanation of the writ petitioner/assessee can be accepted and the sales omission estimated to that extent was deleted. Consequently the three times addition was also restricted to one time addition in respect of other estimations made.

4. The revisional authority exercising his powers u/s 34 of the Tamil Nadu General Sales Tax Act as it stood at the relevant point of time, issued a notice proposing to revise that part of the order of the Appellate Assistant Commissioner relating to Slip No. 5. Unfortunately, the petitioner did not come forward with any explanation. The revisional authority therefore, proceeded to decide the issue and confirmed the proposal made in the show cause notice. The only reasoning of the revisional authority was that in the absence of any explanation from the writ petitioner, the deletion of the sales suppression to an extent of Rs. 2,67,000/- covered by Slip No. 5 and the corresponding levies u/s 12(3)(b) was not justified.

5. Assailing the said order, Mr. Inbarajan, learned Counsel for the petitioner pointed out that, when in regard to the other slips there were specific notings to the effect that the items referred to in the slips in regard to the weight, the value and the ultimate sales effect were found, there was also a specific finding by the Assessing Officer to the effect that such sales were not brought into the accounts, whereas in regard to Slip No. 5, the Assessing Officer failed to consider the stand of the petitioner that the items mentioned in Slip No. 5 were for the purpose of removing them to the house for safe custody during Pongal holidays and that there were no sales effected which were not brought into the accounts of the petitioner. The learned Counsel also pointed out that in the reply dated 06.12.1995 to the Assessing Officer, the petitioner specifically referred to his above stand in paragraph 4. But, yet, the same was not properly considered. The learned Counsel therefore, contended that the findings of the Appellate Assistant Commissioner as regards Slip No. 5 was based on a sound reasoning and in the absence of any serious irregularity or illegality in the said conclusion of the Appellate Assistant Commissioner, there was no scope at all for the revisional authority exercising his jurisdiction u/s 34 to have interfered with the said conclusion of the Appellate Assistant Commissioner .

6. The learned Special Government Pleader on the other hand submitted that the revisional authority gave his own reasoning in the impugned order and that such reasoning was sufficient enough for revising the order of the Appellate Assistant Commissioner.

7. Having heard the learned Counsel for the petitioner as well as the respondent and having perused the orders of the Assessing Officer, the Appellate Assistant Commissioner and the impugned order herein, we are inclined to accept the stand of the petitioner inasmuch as, we find that right from the beginning the writ petitioner took a consistent stand that the jewels noted in Slip No. 5 were only for the purpose of removing them to the house for safe custody during Pongal holidays and there were no other hidden intention in having noted those jewels in the said slip. The said stand of the petitioner was further strengthened by the factual finding of the Assessing Officer himself to the effect that there were no item-ware jewels mentioned in the stock register, the total weight of the stock was found noted in it. There is no specific finding in the said order to the effect that the weight of the jewels found in Slip No. 5 were omitted to be noted in the stock register. Therefore, the Appellate Assistant Commissioner gave a categorical finding to the effect that while the Slip No. 5 was dated 14.01.1995, at the time of inspection on 19.01.1995 when the stock register was verified, the physical verification revealed the availability of all the jewels including the jewel noted in Slip No. 5 as the stock found available in the shop of the petitioner. When such a finding as regards the stock maintained by the petitioner could be ascertained based on entries found in the stock register, the other conclusion of the Appellate Assistant Commissioner that there could have been no sales suppression of the items covered in Slip No. 5 cannot also be faulted. When the said finding of the Appellate Assistant Commissioner virtually affirms the stand of the petitioner that the notings found in Slip No. 5 were for the purpose of taking those jewels to the house during Pongal holidays for safe custody, in the absence of any other finding based on relevant materials which could dislodge such a finding of the Appellate Assistant Commissioner, there would have been no scope at all for the revisional authority to have invoked its jurisdiction u/s 34 to upset the order of the Appellate Assistant Commissioner.

8. As pointed out by us earlier, in the impugned order, the revisional authority even while noting the Appellate Assistant Commissioner''s finding that the jewels noted in Slip No. 5 were found available in the stock of the jewels gathered during inspection and the quantum of the weight of such jewels was also commensurate with the claim of the petitioner, the ultimate conclusion of the revisional authority that there was no explanation from the writ petitioner in respect of items noted in Slip No. 5 was without any basis. In other words, while the findings of the Appellate Assistant Commissioner in regard to Slip No. 5 based on the entries found in stock register was based on relevant materials, the contrary conclusion of the revisional authority had no supporting materials to dislodge the finding of the Appellate Assistant Commissioner. Since at the earliest point of time the writ petitioner in his explanation dated 06.12.1995 had come forward with the stand that those jewels noted in Slip No. 5 were for the purpose of removing them to his house for keeping them in safe custody during Pongal holidays, and there was no necessity for any further explanation to be offered by the petitioner in order to state that there was no explanation at all before the

revisional authority. Therefore, when there was no illegality or irregularity in the order of the Appellate Assistant Commissioner when he deleted the sales suppression to the extent of Rs. 2,67,000/- covered by Slip No. 5, the impugned order of the revisional authority having interfered with the said conclusion of the Appellate Assistant Commissioner was not justified. The impugned order therefore is liable to be set aside.

9. Hence, the writ petition is allowed and the impugned order is set aside. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

