
(2007) 08 MAD CK 0234
In the Madras High Court

Ambal Garments Exports

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

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

Citation : (2008) 15 VST 325

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—This writ appeal is against the order of the learned single judge rejecting the writ petition filed to quash the order of the Joint Commissioner (CT) passed in exercise of the suo motu revisional powers u/s 34 of the Tamil Nadu General Sales Tax Act, 1959.

2. The appellant-firm herein is engaged in the manufacture of hosiery goods and ready-made goods for export. In the course of the assessment year 1990-91, the branch office of the appellant was inspected by the enforcement wing officials on November 28, 1990, wherein, they recovered 100 slips/incriminating records. On the basis of the seized materials, after giving opportunities to the appellant herein, the assessing officer estimated the suppression of turnover at Rs. 48,68,412 taxable at two per cent, disallowed the claim of exemption on the reported turnover of Rs. 60,58,788 and fixed the taxable turnover at Rs. 1,09,37,130. Apart from this, penalty was also levied at Rs. 1,46,052 u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959. Aggrieved by the said order, the assessee preferred an appeal before the first appellate authority, the Appellate Assistant Commissioner.

3. In the course of the proceedings before the Appellate Assistant Commissioner, the appellate authority sought for a report from the assessing authority on the various allegations, in terms of the evidence produced by the appellant before

the first appellate authority. Based on the said report, the Appellate Assistant Commissioner refixed the taxable turnover at Rs. 6,58,487 and reduced the penalty to 50 per cent on the tax due on the actual suppression shown. Viewing the said relief granted by the appellate authority as prejudicial to the interest of the Revenue, suo motu revisional proceedings were initiated by the Joint Commissioner to revise the order of the Appellate Assistant Commissioner and thereby restore the order of the assessing authority dated August 31, 1994. After giving notice to the appellant herein and considering the objections by the appellant, by order dated September 21, 1999, the Joint Commissioner confirmed the proposal for revision, thereby set aside the order of the Appellate Assistant Commissioner and restored the liability, fixing the actual suppression as liable to tax and penalty at 150 per cent on the tax due on the turnover assessed as suppressed turnover.

4. Aggrieved by this order of the Joint Commissioner, the petitioner preferred the writ petition before this Court that the Appellate Assistant Commissioner had recorded the finding as to the inability of the appellant in not producing the accounts due to the accident suffered by the partner of the appellant's firm and the accounts produced before the appellate authority were analysed by the Revenue as directed by the appellate authority, that based on the report alone, the relief was granted to the appellant. Hence, the suo motu revisional proceedings taken by the respondent was wholly untenable on facts and in law.

5. By order dated July 5, 2000 in W.P. No. 9361 of 2000, the learned single judge rejected the prayer of the appellant herein, holding that the Joint Commissioner had rightly invoked his powers to set aside the order of the Appellate Assistant Commissioner. It was noted that the appellant did not produce the documents in spite of sufficient opportunity granted. It was also pointed out that admittedly, it was not the case of the appellants that at the time the summons were issued for the production of accounts, one of the partners of the firm was in hospital. The learned judge further pointed out that the detailed statement given by the partner of the appellant's firm before the enforcement wing officials clearly established that many orders had been placed for export without prior orders from the buyers. It was also pointed out that the records filed before the Appellate Assistant Commissioner had no relevance to the records verified by the enforcement wing authorities. Thus, the learned single judge confirmed the order of the respondent and dismissed the writ petition.

6. Aggrieved by the dismissal of the writ petition, the present appeal has been filed challenging the correctness of the order passed dismissing the writ petition.

7. The learned Counsel appearing for the appellant submitted that when the appellate authority had granted the relief after obtaining a report from the departmental representative on the documents produced, it is not correct to state that the documents had no relevance to the seized materials. Pointing out to the seriousness of the injury suffered in the accident, learned Counsel submitted that there was sufficient cause shown for the absence of the partner in

not appearing before the assessing officer to explain the documents and substantiate the various claims. Going through the order of the appellate authority, learned Counsel pointed out that the appeal being a continuation of the assessment proceedings, rightly the Appellate Assistant Commissioner reduced the assessed turnover and granted the relief. Hence, she prayed for allowing the appeal.

8. The learned Special Government Pleader appearing for the respondent supported the order as one based on the findings of the respondent and that there are no errors to interfere with.

9. Heard counsel for both sides and perused the documents filed.

10. It is seen that the inspection of the place of business of the appellant took place on October 28, 1990 resulting in the seizure of documents indicating suppression of turnover. It is also seen that the appellant was issued summons by the assessing authority more than once to substantiate the claim of exemption. The first of the summons was issued on February 14, 1992 to be followed by further summons dated February 27, 1992, March 7, 1992, June 15, 1992, June 25, 1992 and July 10, 1992. None of them were responded by the appellants. The partner of the appellant's firm suffered an accident on October 4, 1992. In the course of the assessment proceedings, it was stated that the assessee did not participate in the proceedings by producing accounts for check. Taking note of a series of lapse on the part of the assessee in producing the books of account, the assessing authority embarked on best-of-judgment assessment and passed orders thereon on September 13, 1992. The said order of assessment was challenged in the writ petition before this Court in W.P. No. 18231 of 1992.

11. By order dated November 18, 1992 in W.P. Nos. 18230 and 18231 of 1992, this Court quashed the order dated September 13, 1992 with a direction to the assessing officer to issue copies of documents to the appellant herein and grant sufficient time to the assessee to file their reply to the pre-assessment notice. Accordingly, on February 11, 1993, the appellant was given photocopies of the documents seized. The authorised representative of the appellant appeared on February 11, 1993 and promised to produce the accounts within ten days. Even there after wards, it was noted that the assessee did not produce the books of account, but sought for adjournment and ultimately, considering the lack of co-operation in giving the explanation and in producing the accounts, the assessing authority came to the conclusion that the assessee was procrastinating the finalisation of the assessment. Finally, a notice was issued to produce the books of account. In the absence of any production of the books of account, ultimately the assessment was completed by order dated August 31, 1994 on best-of-judgment basis.

12. A perusal of the order of the assessing authority shows that a number of adjournments was granted to the assessee to produce the books of account. This

happened before the date of the accident, namely, October 4, 1992. Even after securing copies of the slips, it is seen that the petitioner failed to avail of the opportunity granted to produce the accounts. In the circumstances, no exception could be taken to the observation as to the conduct of the appellant herein in the matter of extending the co-operation before the assessing authority. On appeal, the appellate authority noted that the assessee did not produce the books of account in spite of an opportunity granted. However, he found that even at the time of hearing of the appeal, one of the partners who was in charge of the affairs of the management present before the Commissioner, had continued disability and that the accident had impaired his physical movement. Hence, the appellate authority held that there was a strong reason to believe that there was a reasonable cause for the said partner not appearing before the assessing authority in the assessment proceedings. However, on the plea of the appellants for recheck of accounts from the assessee, the appellate authority directed the departmental representative to produce the records and documents for verification. Ultimately, based on the report filed, the appellate authority took the view that the assessee had proved the case with all the records; that the claim for exemption was supported by a valid order of export and consequently, the appellant was entitled to relief and modification of the demand made by the assessing authority. The Joint Commissioner, in exercise of his power under the Act, embarked on a suo motu proceeding, wherein, it was pointed out that the statement given by the partner before the enforcement wing clearly established that many orders had been supplied for export without prior orders from the buyers. In the same way, goods were supplied for another concern without accounting for the same. It is stated that the statement before the enforcement wing clearly proved that the transactions were not accounted for, to accept the claim for exemption. Consequently, the respondent held that the attempt made before the Appellate Assistant Commissioner to produce the books of account was without any reason to support the gross failure to appear before the assessing authority even after the supply of materials seized from the appellant. In the background of this, the Joint Commissioner, on the basis of the records available, restored the order of the assessing authority. He further pointed out that the accident of the partner and hospitalisation was only during the period from October 4, 1992 to November 19, 1992, which did not relate to the period of notice issued for the production of accounts. On a misplaced sympathy, the appellate authority had granted relief to the assessee.

13. In the proceedings before this Court, learned single judge rightly pointed out that in spite of the notice issued on September 27, 1994 for the production of accounts, no reply was given by the assessee ; that the respondent went into the merits of the Appellate Assistant Commissioner's order and found that the documents produced before the Appellate Assistant Commissioner bore no relevance to the statement given before the enforcement officials admitting the suppression. In the absence of any material shown to substantiate the claim of the appellant that the finding of the respondent was without any basis, the

learned single judge rightly confirmed the order of the respondent.

14. The learned Counsel appearing for the appellant submitted that there was sufficient cause on the part of the assessee for not appearing before the assessing authority in the matter of production of accounts and hence, the appellate authority had rightly found that as per the report filed by the departmental representative on the various details furnished by the assessee, the estimation could not be sustained except to the extent of Rs. 6,58,487. She further contended that considering the fact that the first appellate authority had sufficient jurisdiction to call for the details and report from the departmental representative, the revisional authority had erred in reversing this order.

15. We do not find any justification to accept the plea of the learned Counsel for the appellant. A reading of the order dismissing the writ petition shows that the learned single judge had rightly pointed out that the partner had suffered the accident long after the issuance of the notice for production of the accounts before the assessing authority, for which there was no reply from the assessee, and even after the photocopies of the documents were seized, the assessee failed to appear before the assessing authority on the issuance of pre-assessment notice.

16. In the circumstances, pointing out to the lack of relevancy of the materials produced in the appeal to the statement of the partner before the inspecting officials, the respondent rightly rejected the plea of the assessee. In the light of the facts found, we find no infirmity in the order of the learned single judge to allow this appeal. Consequently, the writ appeal is dismissed. There will, however, be no order as to costs.