

(2008) 12 MAD CK 0331
In the Madras High Court
Case No : Tax Case No. 917 of 2006

Concept and Devices

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Tamil Nadu Sales Tax Appellate Tribunal Regulations, 1959 — Regulation 12

Citation : (2010) 29 VST 41

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : P. Rajkumar, for the Appellant; K. Radhakrishnan, Government Advocate (T), for the Respondent

Judgement

1. The assessee is a dealer in telephone, voltage stabiliser, etc. They reported total and taxable turnover at Rs. 48,87,918 and Rs. 10,04,823 respectively for the assessment year 1998-99. Their accounts were called for to check the details regarding sales of key telephone, sales of stabiliser and sales of battery. Their place of business was inspected on July 28, 1988 and stock variation was noted. Therefore a proposed turnover was made by adding the actual suppression and an equal amount of estimated suppression. In regard to this the dealer stated that they had not reconciled the stock variation and also objected to penalty and also contended that before the Enforcement Wing Officers they had admitted the difference only under their compulsion. The proposed turnover and penalty was confirmed. The appellate authority confirmed the above. The matter went to the Tribunal.

2. The Tribunal accepted the plea of the assessee that they have documents to prove that the annual maintenance contract turnover is not taxable and that under similar circumstances for other assessment years the matter had been remanded by the Tribunal. Therefore, the Tribunal remanded the appeal with regard to the AMC turnover for verification of the records and passing of appropriate orders. But as regards stock variation of Rs. 1,69,809 and equal time

addition thereof, the Tribunal refused to interfere on the ground that the discrepancy had been admitted.

3. The learned Counsel for the appellant submitted that the reconciliation statement had been produced before the Tribunal but the Tribunal did not take note of it. While as regards AMC turnover the Tribunal had accepted the appellant's case that certain documents were available and could be produced and thereupon remanded the matter to the assessing officer. With regard to the stock variation though a reconciliation statement had been produced before the Tribunal, the Tribunal failed to take note of it.

4. We called for the records and it appears that a reconciliation statement had been just handed over at the time of hearing of the appeal. No application appears to have been filed. The learned members of the Bar also uniformly state that this is the practice that is followed. When there are specific regulations regarding furnishing of additional/fresh documentary evidence the regulations must be complied with. Regulation 12 of the Tamil Nadu Sales Tax Appellate Tribunal Regulations, 1959 reads as follows:

12. Fresh evidence and witness.- (1) The party or the respondent shall not be entitled to produce additional evidence, whether oral or documentary, before the Tribunal, but if-

(a) The authority from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) The party or the respondent seeking to adduce additional evidence satisfies the Appellate Tribunal that such evidence notwithstanding the exercise of due diligence was not within his knowledge or could not be produced by him at or before the time when the order under appeal was passed, or

(c) The Appellate Tribunal requires any documents to be produced or any witness to be examined to enable it to pass order or for any other substantial cause.

The Appellate Tribunal may allow such evidence or document to be produced or witness examined:

Provided that the other party shall, in such cases, be entitled to produce rebutting evidence, if any.

(2) If the Appellate Tribunal is of opinion that any witness should be examined in connection with any case before it, it may, instead of examining him before itself, issue a commission to any Appellate Assistant Commissioner for examining the witness in the presence of the other side who will have the right of cross-examination.

5. The Tribunal is the final fact-finding authority, therefore if there is fresh evidence, the Tribunal may allow such evidence as above. The Tribunal shall exercise its discretion as per these Regulations. Any person wanting to file additional evidence has to comply with the requirements of the said regulations.

We think that the Tribunal as well as the party who wants to file additional evidence shall in future comply with the Regulations strictly. The learned Counsel submits that the reconciliation statement was already part of the record. In any event we think that this is a matter that should be remanded since as regards AMC turnover the Tribunal has already remanded the matter to the assessing officer on the same ground.

6. The learned Counsel also submitted that the only reason as to why the assessee refused to accept the stock variation is the alleged attempt made by the assessing officer stating that the assessee accepted the stock variation before the Enforcement Wing Officers and in this regard the learned Counsel relied upon the decision of the Madras High Court rendered in *Madras Granites (P) Ltd. v. Commercial Tax Officer* [2006] 146 STC 642 para 4 of the said decision is extracted hereunder:

4. No doubt, the assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D3 proposal, the Deputy Commissioner (CT), Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D3 proposal and also levied the penalty in the manner indicated in D3 proposal. It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected W.P.M.Ps. are closed.

7. In the above circumstances we remand the matter to the assessing officer who shall examine the issue of stock variation in the light of the reconciliation statement and pass orders in accordance with law. This tax case is disposed of as above.