(2009) 04 MAD CK 0576

In the Madras High Court

Case No : T.C. (R) No. 1706 of 2006

Ellon Curative Pvt. Ltd. APPELLANT

Vs

Deputy Commercial Tax Officer and Another RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Constitution of India, 1950 — Article 265
Tamil Nadu General Sales Tax Act, 1959 — Section 22, 22(1), 22(2), 45(1A)

Citation : (2009) 25 VST 402

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : M. Desinghu, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The correctness of the order of the Tribunal dated July 10, 2001 made in T. A. No. 473 of 2000 is canvassed in this appeal by formulating question of law as under:

Whether the Tribunal was right in law in upholding the order of the assessing officer, which failed to appreciate the tax recoupment of controlled commodity under the provisions of Section 22(1) of the Tamil Nadu General Sales Tax Act, 1959, read with Section 9(2) of the Central Sales Tax Act, 1956 ?

2. The assessee is a registered dealer on the file of the Velacherry assessment circle. They are dealers in pharmaceutical business. For the assessment year 1997-98, the assessee reported total and taxable turnover of Rs. 5,92,488 and Rs. 4,29,072, respectively. The assessing officer, on verification of the books of accounts, determined the total and taxable turnover of Rs. 5,92,488 and Rs. 4,29,072, respectively and levied penalty in a sum of Rs. 7,321 u/s 22(1) of the TNGST Act. The petitioners submit that according to proviso of Section 22(1) of the TNGST Act, the collection amount by a registered dealer towards the amount

of tax already suffered under this Act in respect of goods, the sale or purchase price of which is controlled by any law in force cannot be treated as excess collection. That explanation given by the assessee has not been accepted by any of the authority under the Act including the Tribunal. The correctness of the case is now canvassed before this Court.

3. The learned Counsel for the petitioner reagitated what is stated by the assessee in respect of the commodities, the price of which is controlled by separate law. He further contended that excess collection cannot be regarded as violation of the provision contained in Section 22 of the TNGST Act for which act, the penalty u/s 22(2) is not available. We are afraid to accept the contention of the learned Counsel for the petitioner, having regard to Section 22(2) which reads as follows:

22(2) : If any person or registered dealer collects any amount by way of tax or purporting to be by way of tax in contravention of the provisions of Sub-section (1), whether or not any tax is due from such person or dealer under this Act in respect of the transaction in which he collects such amount, the assessing authority may, after giving such person or dealer a reasonable opportunity of being heard, by order, in writing impose upon him by way of penalty a sum, which shall be:

(i) where the excess amount has been collected in the bona fide belief that it had to be collected, one hundred per cent of the amount collected ;

(ii) where the excess amount has been collected wilfully and knowing that it was not due to be collected, one hundred and fifty per cent of the amount collected:

Provided that no proceedings under this sub-section shall be commenced after a period of five years from the date of order of the final assessment by the assessing authority.

Provided further that no prosecution for an offence under Sub-section (1A) of Section 45 shall be instituted in respect of the same facts on which a penalty has been imposed under this Act.

4. Any collection made unauthorisedly is definitely a violation u/s 22 of the TNGST Act and the amount has to be recovered from the person who collected and the same, of course, by way of penalty under the provisions of the Act. Article 265 of the Constitution of India also emphasizes that tax cannot be collected without any authority of law.

5. Hence, for the foregoing reasons, this revision is dismissed. No costs.

