(2009) 12 MAD CK 0158

In the Madras High Court

Case No : Tax Case (Appeal) No. 1825 of 2008

G. Authithan APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 16-12-2009

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

Citation : (2011) 41 VST 333

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

Bench : Division Bench

Advocate : A Thiyagarajan, for S. Balamurugan, for the Appellant; Haja Nazruddin, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This is an appeal filed at the instance of the assessee against the suo motu revision on the order of the Appellate Assistant Commissioner, Madras, against the assessment order made by the Deputy Commercial Tax Officer, Nilakottai.

2. The assessee was assessed on a total and taxable turnover of Rs. 85,79,460 against the reported turnover of nil in respect of the assessment year 1992-93 On the check of accounts, the assessing officer has found certain defects Based on the said defects and also the materials collected in D7 records during the search of the house of the dealer on February 22, 1993, the assessing officer rejected the accounts and resorted to best judgment assessment and determined the total and taxable turnover to Rs. 85,79,460 and levied penalty in a sum of Rs. 5,45,507 u/s 12(3) of the TNGST Act. The assessee carried the matter on appeal to the first appellate authority, the Appellate Assistant Commissioner, who allowed the appeal on the ground that no purchase or sale bills were secured in the name of the assessee to establish that he was a dealer in coffee seeds. No confirmation statement was obtained from the appellant that he was a dealer or the records recovered related to him. Neither D7 records nor the account books

marked as A and B contained the name of the appellant. Right through, the appellant disowned the records at the time of preparation of mahazar, obtaining deposition statement. It was not proved beyond doubt that the records were written by the appellant. The order of the Appellate Assistant Commissioner was examined by the Joint Commissioner, who formed an opinion that the order is not only erroneous but also prejudicial to the interest of the Revenue and invoked the suo motu revision and issued notice and after hearing the parties the Joint Commissioner set aside the order of the Appellate Assistant Commissioner and restored the order of the assessing officer. The correctness of the same is now canvassed before us.

3.We heard the learned counsel appearing for the appellant and perused the materials on record.

4. The place of business and the residence of the dealer, viz., the appellant was inspected and searched by the officers of the inspection wing. The Hooks marked A and B and 76 slips were recovered during the inspection and search. The bills and slips recovered contained the name and address of the dealers whose registration certificate numbers have been cancelled. The assessing officer has collected the required bills from the Central Excise Department and other authorities from which it is clear that the said dealers whose names were found in the document unearthed during the inspection were dealers of books nature and the registration certificates issued to them have been cancelled with effect from March 31, 1990, March 31, 1992 and March 31, 1986.

5. It is not the case of the appellant that he has not been given an opportunity to controvert the case made against him. He was given ample opportunities and all the details requested for by the dealer have been furnished. It appears that the appellant has sought for cross-examination of the said persons and requested the Department to produce them for cross-examination which was denied. When the material is admittedly unearthed from the place of business and the residence of the assessee, it is for him to explain as to how those materials were within the business premises or the residential premises and after a reasonable explanation being given, if the Department has taken contrary view he can ask for any further details from the Department so as to enable him to make his argument either to reject or discard those documents. Here, in this case, everything has been bluntly denied by the appellant, despite the fact that these materials have been recovered in the search conducted by the Department. The Appellate Assistant Commissioner has remitted back the matter in respect of certain turnover pertaining to the persons whose registration certificates have been cancelled. We do not find any reason for such remittal order. The facts, on record, are available that the registration certificates numbers have been cancelled by the appropriate authority under law with effect from the dates as stated above. Those persons have not taken any steps or interest to get a fresh certificate before the assessing officer. The correctness of the order passed in cancelling the registration certificate numbers has not been questioned. All these

things would go to prove that the dealer had carried on clandestine transaction and everything is not correct, which made the Joint Commissioner to suo motu revise the order of the Appellate Assistant Commissioner, and set aside the same and restore the assessment order of the assessing officer. We do not find any illegality or irregularity in the order of the Joint Commissioner to admit this appeal. In the result, the appeal is dismissed. No costs.