(2009) 12 MAD CK 0142

In the Madras High Court

Case No : T.C. (R) No. 2174 of 2008

J.H. Aluminium Private Limited APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(1)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 6(A)

Citation : (2010) 30 VST 545

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

Bench : Division Bench

Advocate : C. Rekha Kumari, for the Appellant; P. Tholgappian, Government Advocate, for the Respondent

Judgement

K. Raviraja Pandian, J.—This Tax Case Revision is directed against the order of the Sales Tax Appellate Tribunal dated 16.6.2000 made in STA. No. 118 of 1999 by formulating the following questions of law:

1. Whether Tribunal is right in sustaining the levy of penalty u/s 12(3)(b) of the TNGST Act, 1959, when the assessment has been made based on the figures culled out from the books of accounts?

2. Whether the Tribunal is correct in confirming the levy of penalty on mere ground that the petitioner claimed certain exemption while execution of works contract?

3. Whether the Tribunal is right in sustaining the penalty u/s 12(3)(b) of the Act, without giving any concrete findings about best of judgment assessment in petitioner''s case?

4. The Hon''ble Madras High Court in 125 STC 505 in the case of Appollo Saline held that the penalty u/s 12(3)(b) of the Act cannot be levied in the absence of best of judgment u/s 12(2) of the TNGST Act, 1959.

2. The minimum facts which are necessary for the disposal of the Tax Case revision are as follows:

The Revision petitioner is an assessee under TNGST Act and carrying on business in works contract. In the course of its business, it undertook the work of manufacturing doors and windows. For the assessment year 1993-94, the revision petitioner reported the entire turn-over to the department and claimed compensation on works contract, as there was no charging section for the taxation of the turnover arising out of works contract at that point of time under the TNGST Act. For execution of works contract, the revision petitioner used the materials purchased on inter-state as well as locally. The revision petitioner did not remit tax on the materials used by it in the works contract. The charging provision 3B of the TNGST Act in respect of levy of tax in works contract was incorporated in the Act on 28.5.1993 by giving retrospective effect from 26.6.1986. It is to be noted that earlier the relevant Rule 6(A) of TNGST Rules authorised for quantification of the works contract has been struck down by this Court. Subsequently, the rules and provisions had been inserted by Act 25 of 1993 on 28.5.1993 by giving retrospective effect from 26.6.1986. The taxability of works contract, whether it is divisible or indivisible was in-considerable doubt during the relevant period. For the relevant assessment year, the entire turnover has been returned, however exemption was claimed in respect of the turnover governing the works contract. The assessing officer has accepted certain portions of the turnover, however the rest of the turnover has been brought for tax. Immediately, the assessee has paid the tax as determined by the Assessing officer. The assessing officer not only taxed the taxing turnover, but also levied penalty u/s 12(3)(b) of the TNGST Act.

3. The short issue in the present case whether in the above facts and circumstances of the case, the penalty u/s 12(3)(b) of the Act can be levied or not. The issue is more res integra. The penal provisions Sections 12(1) to 12(5) of the TNGST Act, which underwent several amendments during the period from 1987-1988 to 1992-93, had been dealt with in an elaborate manner by a Division Bench of this Court in Appollo Saline Pharmaceuticals (Private) Limited v. Commercial Tax officer (FA) and Ors. reported in (2002) 125 STC 505 wherein it was held that the assessment in respect of the assessment years 1993-94 and 1994-95, if made, on the basis of the returns filed and accounts maintained by the assessee and were not made on estimates, the assessment could be regarded only as an assessment u/s 12(1) of the TNGST Act to which the penal provision of Section 12(3) of the TNGST Act were not attracted. Therefore, the levy of penalty for those years is against the statutory provision. Here, in this case also, the relevant assessment year is 1993-94. The ratio laid down by the Division bench in the above referred to decision squarely covers the facts of the present case. In the light of the Division Bench Judgment above referred to, the penalty imposed by the assessing officer and upheld by the Tribunal is set aside. The Tax Case revision is set aside. No costs.

