

(2013) 09 MAD CK 0322

In the Madras High Court

Case No : Tax Case (Appeal) No. 2011 of 2008

Jothi Engineering Works

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 67 VST 297

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Vasumithran for Mr. N. Inbarajan, for the Appellant; Manohar Sundaram, AGP (T), for the Respondent

Judgement

Chitra Venkataraman, J.—This Tax Case (Appeal) is filed by the assessee as against the order of the Joint Commissioner suo motu revising the order of the Appellate Assistant Commissioner as regards the cancellation of penalty made u/s 23 of the Tamil Nadu General Sales Tax Act. The assessment year under consideration is 1988-89. It is seen from the facts narrated that the assessee purchased tyres and tubes during 1988-89 by availing concessional rate of tax u/s 3(3) of the Tamil Nadu General Sales Tax Act, 1959. The purchase of tyres and tubes were used by the assessee as component parts in the manufacture of animal driven vehicles. Holding that the assessee was not entitled to claim concessional rate of tax, as animal driven vehicles were multi-point items, proceedings were initiated to tax the differential rate of tax on the purchase of tyres and tubes. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner. In the course of the appeal, the Departmental Representative pointed out that having regard to the violation of Form XVII, penalty was to be levied u/s of 23 of the Tamil Nadu General Sales Tax Act. The first Appellate Authority applied the decision of this Court reported in Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu, and held that Section 23 contemplated levy of penalty only on the contravention of declaration of Form XVII and not when the item was used as a component part of some other goods

not specified in the First Schedule; consequently, the first Appellate Authority allowed the appeal. Finding the order erroneous, the Joint Commissioner invoked the suo motu revisional powers and accordingly issued notice.

2. The assessee resisted the proposal by placing reliance on the decision cited above. After hearing the assessee, the Joint Commissioner pointed out that the decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, was reversed by the Full Bench of this Court in the decision reported in *Madras Electrical Conductors (P) Ltd. Vs. State of Tamil Nadu*, wherein this Court had held that the Explanation to Section 3(3) provided that for the purpose of Section 3(3), "component part" means an article which forms an identifiable constituent of the finished product, which along with the others goes to make up the finished product and which is identifiable visually or by a mechanical process and not by a chemical process. Thus, overruling the decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, this Court upheld that levy of penalty u/s 23 of the Tamil Nadu General Sales Tax Act. Applying the said decision, the Joint Commissioner set aside the order of the Appellate Assistant Commissioner and thus held that for misuse of Form XVII, penalty was leviable u/s 23 of the Tamil Nadu General Sales Tax Act. Thus the suo motu revision proposal to direct the Assessing Officer to initiate fresh proceedings was upheld. Aggrieved by this, the present Tax Case (Appeal) has been filed.

3. Learned counsel appearing for the assessee pointed out that apart from want of jurisdiction on the part of the Joint Commissioner to direct the Assessing Officer to invoke Section 23, even on merits, as on the date of passing of the assessment order, the decision of this Court was very much available and it was considered by the first Appellate Authority to reject the State's contention. Hence, the Joint Commissioner ought not to have exercised his jurisdiction u/s 34 of the Tamil Nadu General Sales Tax Act by placing reliance on the subsequent decision of this Court to direct initiation of penal action u/s 23 of the Tamil Nadu General Sales Tax Act. He pointed out that the authority of the Joint Commissioner lays only in so far as the order passed by the Appellate Authority, which was prejudicial to the interests of the Revenue. Even on merits, he submitted that there is no case for levy of penalty.

4. Heard learned counsel appearing for the assessee and the learned counsel appearing for the State and perused the materials placed before this Court.

5. As far as the jurisdiction of the Joint Commissioner u/s 34 of the Tamil Nadu General Sales Tax Act is concerned, he can on his own motion call for and examine an order passed u/s 4A, section 12, section 12A, section 15 or sub-section (1) or (2) of section 16 or an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 31 or by the Appellate Deputy Commissioner under sub-section(3) of section 31A or by the Deputy Commissioner under sub-section (1) of section 32 or sub-section(3) of section 33 and if such order or proceeding recorded is prejudicial to the interests of the Revenue, after making enquiry or causing such enquiry to be made, initiate

proceedings to revise, modify or set aside such order or proceeding and pass orders thereon. The Section, however, cautions that the exercise of power must be subject to the provisions of the Act.

6. In the decision reported in *A. Velayutha Raja, Raja Engineering Co., Madurai Vs. Board of Revenue (CT), Madras*, , the Division Bench of this Court had an occasion to consider Section 34 of the Tamil Nadu General Sales Tax Act as regards the direction issued to reopen the assessment. This Court pointed out that the Joint Commissioner, in exercising the jurisdiction u/s 34 to issue directions to the Assessing Officer, can function only within the frame of the Act and he has to sit in the arm chair of the Assessing Officer to find out whether any such jurisdiction is there at all under the Act for making such directions. In other words, what the Officer could not do under the normal procedure, the revisional authority equally cannot do. In the circumstances, if under any particular provision, the Assessing Officer has no jurisdiction to initiate any action, even in the guise of exercise of power u/s 34, the Joint Commissioner cannot do. Except for this limitation, we do not find there exists any limitation for us to read into the authority of the Joint Commissioner to revise or modify or set aside the order or proceedings and to pass such orders therefor.

7. It is not denied by the assessee that in the course of the proceedings before the Appellate Assistant Commissioner, the Revenue appealed to the first Appellate Authority to consider the invoking of Section 23 of the Tamil Nadu General Sales Tax Act. The assessee did not produce any material, except to the extent on merits, to hold that penalty cannot be levied. This was so based on the decision reported in *Elgi Equipments (Private) Limited Vs. The State of Tamil Nadu*, . Accepting the said decision, the Appellate Authority rejected the Revenue's contention for levy of penalty. Thus, if the assessee had had no grievance as regards the issue raised by the Revenue proposing to levy penalty before the first Appellate Authority, we do not find any inhibition even otherwise on the authority of the Joint Commissioner to invoke his revisional powers to give a direction to the Assessing Officer to invoke penalty in view of Section 23 on the violation of Form XVII. Thus, we reject the prayer of the assessee as to the jurisdiction of the Joint Commissioner u/s 34 of the Tamil Nadu General Sales Tax Act to give such directions to the Assessing Officer as regards initiation of penal proceedings.

8. As far as the reasonable cause or otherwise is concerned, we do not think that at this stage, we should enter into the said question, since u/s 23, it is always open to the assessee to show cause on the action that may be proposed by the Assessing Officer pursuant to the directions issued u/s 34. As regards the contention of the assessee that the assessee had had reasonable cause in the form of decision in its support, we do not find that such a contention should be accepted, since the decision, per se, does not afford a reasonable cause for the violation; the decision merely gives a ruling on when penalty could be levied and nothing further than that. The question is whether the assessee had committed

any violation of Form XVII issued by him. Section 23 is only for imposing penalty in lieu of the proceedings u/s 45(2)(f) of the Tamil Nadu General Sales Tax Act. Consequently, we do not find any ground to interfere with the order of the Joint Commissioner. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.