(2009) 03 MAD CK 0154

In the Madras High Court

Case No : Tax Case (Appeal) No. 1833 of 2006

K.A. Khaleel Ahmed APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2009) 03 MAD CK 0154

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : S. Sridhar, for the Appellant; Haja Naziruddin, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal is filed against the order of the Joint Commissioner-III(SMR) of Commercial Taxes, Madras-5 dated 18.5.95 made in suo motu revision SMR No. 793/94.

2. The brief facts which are necessary for the disposal of the appeal are as follows:

The appellant, who is a dealer in gram-dhall flour at Tirupattur, was re-assessed by the Deputy Commercial Tax Officer, Enforcement-I, Tirupathur, who determined the actual sales suppression of gram flour at Rs. 12,84,985/- at 4% for the year 1987-88. The officer had imposed a penalty of Rs. 25,700/- u/s 16(2) of the TNGST Act and levied the corresponding additional sales tax of Rs. 2881/- based on the extract taken from Katpadi and Jolarpet Railway Junction goods-yards and State Bank of India, Tirupathur, by which purchase omissions were noticed. Aggrieved by that order, the dealer has filed an appeal before the Appellate Assistant Commissioner (CT), Vellore, who deleted a portion of the turnover stating that the purchases had been accounted for in the accounts. He had also deleted another portion of the turn over stating that the Assessing

Officer had not proved beyond doubt that the dealer had cleared the goods in question. However, he sustained the turn over of Rs. 2,92,337/- only. In that regard, he had reduced the penalty to 50% of the tax due on the suppressed turn over as aforesaid. The Joint Commissioner, having formed an opinion that the order of the Appellate Assistant Commissioner is prejudicial to the interest of Revenue and erroneous in nature, has taken up the matter suo motu and restored the turn over of Rs. 9,92,648/- involving a tax of Rs. 39,206/-, Additional Sales Tax of Rs. 28,811/- and penalty of Rs. 19,854/-. The correctness of the same is now canvassed in this appeal.

3. Heard the learned Counsel appearing on either side and perused the materials on record.

4. Based on the extract taken from the goods-yards of Katpadi and Jolarpet Railway Junction as well as State Bank of India, Tirupathur, the Assessing Officer verified the accounts of the assessee and found that the said purchases were not accounted for. Therefore, the assessing Officer has estimated the taxable turn over by adding 10% towards freight charges and gross profit and resultant turn over was brought to tax. For the suppression found out by him, he levied penalty u/s 16(2) of the Act. From the records, it could be seen that the assessee had admitted that the purchase omission in his statement dated 16.03.1989 without any uncertain terms. The very admission has been extracted at page 17 of the typed set of papers filed, in the order of the Appellate Assistant commissioner.

5. A perusal of the same made it clear that the assessee has admitted the suppression found out based on the extract from the Railway Officers and Bank. When that being the position, there is nothing wrong in bringing the suppressed turn over for taxation and in invoking the penal provision towards the said suppression. That is what exactly the Joint Commissioner has done in his suo motu revision. We find no illegality or irregularity in the order of the Joint Commissioner and hence, the Tax Case Appeal is liable to be dismissed and accordingly, the same is dismissed.