(2013) 07 MAD CK 0083

In the Madras High Court

Case No : Tax Case (Revision) No. 3 of 2011

M/s. Arun Industries APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1)(a)

Citation : (2014) 71 VST 308

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Sundareeswaran, for the Appellant; A.R. Jayapratap, Govt. Advocate (Tax), for the Respondent

Judgement

Chitra Venkataraman, J.—The assessee is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment

year 2004-05 raising the following questions of law:-

1. Whether the Appellate Tribunal was correct in ignoring the law that ""best judgment assessment"" much less in a revision of assessment ought not

to be based upon the ""profit element"" (68 STC 55 (Mad), 25 STC 22 (Orissa), 43 STC 167 (All), 25 STC 501 (Orissa) and 27 STC 337

(Allahabad)?

2. Whether the Appellate Tribunal was correct in rejecting the contentions raised by the petitioner regarding the jurisdiction of the Officer in making

the revision of assessment u/s 16(1)(a) of the Tamil Nadu General Sales Tax Act, 1959 was not satisfied as interpreted by the Apex Court and this

Hon''ble Court?

3. Whether the revision of assessment made by the authority was in compliance of the proviso to Rule 15(6) of the TNGST Rules, 1959 as

reiterated by the Special Commissioner?

4. Whether the Appellate Tribunal was correct in dismissing the appeal without appreciating the law that the exercise of revision of assessment

ought not to be made in a casual manner and on a ""mere change of opinion"" consequent to the inspection of the Central Excise Department since

the taxable event being different in both enactments? And

5. Whether the Appellate Authorities below had misdirected and thereby fell into an error in dismissing the appeal without appreciating the fact that

even as per the records filed at the time of the original assessment, the petitioner had not reported ""gross loss"" at Rs. 4,23,030/- but had only

reported ""gross profit"" of Rs. 28,01,407.03?

The assessee herein is a dealer in Machinery Parts. The original assessment of the assessee was made by the Assessing Officer on 29.12.2005,

accepting the return filed by the assessee. However, further verification of the assessment files revealed that there were no quantitative details of

purchase and sales. Pointing out to the consumption of materials, which suffered local tax and inter-State purchase, the Assessing Officer viewed

that the total first sales would be Rs. 35,51,317/- as against the declaration of Rs. 14,46,453/- accepted at 3%. In the absence of any details

either through sale bills or entries in the accounts, first sale omission was estimated. Thus the assessment was proposed to be revised.

2. On the notice sent to the assessee, in the reply sent, the assessee stated that their books of accounts were with the Central Excise Department

for the assessment year 2004-05 and consequently enclosed some working sheet for the turnover reported for the assessment year 2004-05.

However, there was no copy of the Mahazar produced regarding the seizure of the materials by the Central Excise Department and there was no

further reply from the assessee. In the circumstances, in the absence of any materials produced as against the allegations leveled, revision of

assessment was confirmed. As against the same, the assessee went on appeal before the Appellate Deputy Commissioner.

3. The assessee produced Mahazar copy before the First Appellate Authority, in which, there was one general ledger for the year 2004-05 taken

by the Central Excise Department. Thus, the Appellate Deputy Commissioner viewed that what was taken away was only the computerized print out and there must be access to the information through the computerized accounting system, which was available with the assessee. Thus, in the

absence of production of accounts to support the assessee''s claim, the assessment was confirmed. Aggrieved by this, the assessee went on further

appeal before the Sales Tax Appellate Tribunal, which confirmed the assessment.

4. The Sales Tax Appellate Tribunal confirmed the findings by the lower authorities. It pointed out that even at the appeal stage, all that the

assessee produced in the form of evidence was one copy of ledger seized by the Central Excise Department. Aggrieved by this, the present tax

case revision by the assessee.

5. Even though learned counsel for the assessee submitted that by reason of the seizure of the accounts by the Central Excise Department, the

assessee could not reply, admittedly the assessee had all the information with it and there was no satisfactory explanation for the non-production.

All that the assessee explained before the Court was that the Computerized system was with the Chartered Accountant and hence, the assessee

was not able to produce the same before the authorities below. But this kind of explanation does not satisfy the requirements of law.

6. In the circumstances, we do not find any justifiable ground to accept the plea of the assessee. Learned counsel appearing for the assessee,

however, pointed out to the Clarification issued by the Commissioner of Commercial Taxes in Circular No. 4 of 2004 as per which the Officer

ought to have obtained the concurrence of the Deputy Commissioner (Commercial Taxes), while making the revision of assessment involving

imposition of tax Rs. 1,00,000/- and above. We do not think such a circular could stand in the way of assessing the escaped turnover, particularly,

in the context of the materials available warranting such a revision of assessment. In the circumstances, the Tax Case Revision stands dismissed.

No costs.

