(2008) 11 MAD CK 0235

In the Madras High Court

Case No : Tax Case (Revision) No. 1114 of 2006

Parvathi Bhavan Sweets APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

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

Citation : (2009) 22 VST 368

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : A. Ravichandran, for the Appellant; Haja Najirudeen, Spl. G.P. (Taxes), for the Respondent

Judgement

Prabha Sridevan, J.—Two substantial questions of law are raised in this tax case : One with regard to the legality and validity of three times addition of the estimated suppression and that too on the basis of the assessment relating to previous assessment year, and two, whether the penalty imposed u/s 12(3)(b) on the estimated suppression is sustainable.

2. The assessee is a dealer in sweets and savouries. The present case relates to the assessment year 1998-99. Place of business was inspected by the authorities on October 26, 1998 and several discrepancies were found. Actual suppression detected from the records recovered at the time of inspection was Rs. 1,31,892. The assessing authority found that for the year 1997-98, there was suppression of sales turnover of Rs. 9,18,762, whereas the dealer had recorded turnover of only Rs. 3,09,233. On this basis, three times estimated suppression was calculated and addition of penalty was also imposed.

3. On appeal, the appellate authority held that regarding three times addition, the same was done in accordance with the decision A.V.K. Marimuthu Nadar and Brothers Vs. The State of Tamil Nadu, and since at the time of inspection no accounts, except sales register, were maintained, no exception could be taken to the addition of three times and levy of penalty u/s 12(3)(b) was also confirmed.

Against that, an appeal was filed before the Tribunal. The Tribunal also confirmed the findings of the assessing authority.

4. The learned Counsel submitted that there was no basis for three times addition and u/s 12(3)(b), penalty can be imposed only on a specific concealment and not on estimated suppression and since the actual suppression was fixed at Rs. 1,31,892, penalty should also be calculated based on that.

5. That learned Special Government Pleader referred A.V.K. Marimuthu Nadar and Brothers Vs. The State of Tamil Nadu, and submitted that there was no error in employing the multiplier of 3 for fixing addition. As regards penalty, he would submit that there was no warrant for interference.

6. In A.V.K. Marimuthu Nadar and Brothers Vs. The State of Tamil Nadu, , it was a case where, on a surprise inspection, the officer recovered slips of papers showing actual suppression of turnover by the assessee during a period of 15 days. The officer concluded that the assessee should have resorted to suppression continuously during the earlier periods as well, and estimated the turnover at 16 times the suppression disclosed in the slips. In the said case this Court held thus: (page 314)

...the estimation of suppressed turnover on best judgment basis by the assessing officer was just and reasonable. Even if the assessing officer had adopted a different multiple, unless it was found to be so arbitrary and unreasonable, the court would not interfere. It was not necessary for the assessing officer in such circumstances to be in possession of any correct measure to find out the escaped turnover. Therefore, the appellate Assistant Commissioner had no material on which he should have held that the assessing officer''s estimation of the suppressed turnover was in any way arbitrary or illegal. The reasoning of the Appellate Assistant Commissioner that there was no ground to hold that similar suppression should have ruled during the previous part of the year was contrary to the ratio of the judgment of the Supreme Court in Commissioner of Sales Tax v. H.M. Esufali H.M. Abdulali [1973] 32 STC 77.

7. In the present case, some basis is given for arriving at an estimated suppression. The authorities have concluded that there is three time suppression and following A. V. K. Marimuthu Nadar and Bros. v. State of Tamil Nadu [1981] 47 STC 314 (Mad), we do not find any error in adopting the multiplier 3, in the facts and circumstances of the case. This question is answered against the assessee. As regards penalty, it shall be calculated on the actual suppression, which is Rs. 1,31,892.

8. The tax case is partly allowed. No costs.

