(2011) 04 MAD CK 0437

In the Madras High Court

Case No : TC (R) . No. 920 of 2006

Polycoat Industries — APPELLANT

Vs

Commercial Tax Officer and Another — RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(1), 12(3)(b), 3(4)

Citation : (2011) 46 VST 391

Hon'ble Judges : P.P.S. Janarthanaraja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Kumaresan, for the Appellant; K. Radhakrishnan, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The assessee is on revision as against the order of the Tamil Nadu Sales Tax Appellate Tribunal allowing the levy of penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act. The assessing authority fixed the turnover after following the formula for incorrect and incomplete return. The tax case revision was admitted on the following substantial questions of law: 1. Whether the Appellate Tribunal is correct in confirming the imposition of penalty u/s 12(3)(b) for non-disclosures of turnover u/s 3(4) of the TNGST Act, 1959 when the levy itself was introduced in the assessment year 1993-94?

2. When the turnover u/s 3(4) was estimated from the turnover available in books, whether penalty levied is justified as per Appollo Saline Pharmaceuticals (P) Ltd. Vs. Commercial Tax Officer (FAC) and Others,

It is seen from the order of the assessment that the place of business was inspected by the Enforcement Wing on February 16, 1994 and that the stock held in the factory could not be verified as the same was under lock and key. As far as the factory was concerned, the Enforcement Wing found stock variation. It was further noticed that the dealers had effected consignments sales of finished goods manufactured by them by using the raw materials purchased after availing of the concessional rate of tax, which was contrary to the provisions u/s 3(4) of the TNGST Act, 1959. On the accounts and return filed, the assessing officer adopted formula and thereafter determined the taxable turnover.

2. Aggrieved by the same, the assessee went on appeal before the Appellate Assistant Commissioner, who allowed the appeal only as regards the penalty levied. However, on the quantum of assessment, the Appellate Assistant Commissioner confirmed the same. The Revenue went on further appeal before the Tamil Nadu Sales Tax Appellate Tribunal. As far as the levy of penalty of Rs. 45,404, following the decision in W. A. No. 1014 of 1997 dated March 30, 1998, going by the assessment, on account of incorrect and incomplete return, the Tribunal upheld the levy of penalty, thereby, restored the order of penalty. Aggrieved by the same, the assessee has filed the present tax case (revision).

3. The learned counsel appearing for the assessee submits that when the assessment is one u/s 12(1) of the Tamil Nadu General Sales Tax Act, the question of levy of penalty u/s 12(3)(b) of the TNGST Act does not arise. A perusal of the order of assessment does not support the claim made by the assessee. The reasons for adopting the formula as given by the assessing officer in the order of assessment, clearly shows that in the absence of reporting the turnover in their returns, the taxable turnover was fixed after rejecting the return figure. The turnover as culled out from the books was made as the basis for making the best of judgment assessment. The assessing officer pointed out that the dealer effected consignment sales of finished goods manufactured by them by using the raw materials purchased at concessional rate under form XVII. Thus, estimating the proportionate purchase value of the raw materials, the assessment was made. Going by the above, the assessing officer rightly levied penalty u/s 12(3)(b) of the TNGST Act and the Tribunal confirmed the same. We do not find any error in the said order of the Tribunal. Accordingly the assessee''s revision stands dismissed. No costs.