(2009) 04 MAD CK 0049

In the Madras High Court

Case No : Tax Case (Revision) No. 1668 of 2008

Radha Metals APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(B), 2(1)

Citation : (2010) 28 VST 193

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Jayapratap, for S.N. Kirubanandam, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The revision is filed by the assessee against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional

Bench), Chennai dated 28.04.2000 and assessed in STA No. 533 of 1999.

2. The levy of tax and penalty in respect of the premium received for transfer of REP licences is put in issue in this revision. The issue that the sale

of REP licences is assessable to tax was settled by this Court as early as 04.04.1994 in the case of P.S. Apparels v. Deputy Commercial Tax

Officer 94 STC 139 , wherein after hearing the counsel on either side, ultimately this Court held that REP licences/exim scrips are ''goods'' in

etymological sense and in common parlance as also within the meaning of Section 2(1) of the TNGST Act, 1959 and Section 2(d) of the CST

Act, 1956. Having regard to the levy of penalty after hearing the counsel on either side, the Division Bench, in para 15 held that the respondents have made it known that the transactions of the nature under consideration are liable to be taxed at some point of time during the assessment years

1992-93 and the various assessees had an opportunity to submit revised returns or pay tax due on the transactions in question. Consequently, the

Division Bench has taken the view that the penalty, if any, could be leviable only from the assessment years 1992-93 onwards and the respective

assessing authorities shall consider the issue relating to the actual levy of penalty in individual cases depending upon the facts and circumstances of

the case in accordance with law. This judgment has been confirmed by the Supreme Court in the case of Vikas Sales Corporation and another,

etc. etc. Vs. Commissioner of Commercial Taxes and another, etc. etc., .

3. In the case on hand, the factual finding arrived at by the Tribunal is that the assessment order has been passed in this case on 23.12.1994 which

is well subsequent to the hotly contested decision in the case of P.S. Apparels v. Deputy Commercial Tax Officer 94 STC 139. Hence, the

assessee should have paid the tax on the value of sale REP licence before framing the assessment. But the assessee did not pay the relevant tax

before final assessment, when there was sufficient opportunity for payment of taxes. During the relevant period 1993-94, the penalty provision u/s

12(3)(b) of the Act was not the same, as considered by the Division Bench in P.S. Apparels v. Deputy Commercial Tax Officer, cited supra,

where, if there is wilful non-disclosure the assessing officer is vested with power of discretion for levy of penalty. However, during the relevant

period, the penalty provision has been amended without giving any discretion to the assessing officer by taking away the ingredient of ''wilful non-

disclosure'' from the statutory provision and also taking away the discretion vested with the assessing officer to levy the penalty. But slab rate of

penalty was statutorily fixed by the amended provision which came into effect on and from 01.07.2002. So, if there is a difference between the tax

paid and tax assessed, the penalty has to be levied u/s 12(1) of the Act. The taxability of income from transfer of REP licence was again confirmed

in the case of Yasha Overseas v. Commissioner of Sales Tax (2008) 17 VST 182 by the apex Court. The scope of statutory penal provision has

also been enunciated by three Judge judgment of the apex Court in Union of India (UOI) and Others Vs. Dharamendra Textile Processors and

Others, ,

4. There is absolutely no material whatsoever made available for us to take a different view, having regard to the dispute as to the taxability of the

turnover or any genuine reason given by the assessee for non payment of the tax on that turnover prior to the framing of the assessment. Hence, we

do not find any reason to entertain this tax case revision. The Tax case revision is dismissed.

