
(2008) 11 MAD CK 0236
In the Madras High Court
Case No : T.C. (R) No. 1330 of 2006

Ram Sun Fabi Techs

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 16, 16(1)

Citation : (2010) 28 VST 250

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

Bench : Division Bench

Advocate : A. Thiagarajan for S. Balamurugan, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Judgement

K.K. Sasidharan, J.—This tax case is at the instance of the assessee, challenging the order dated September 12, 2002, in Appeal No. 397/2002 on the file of the Tamil Nadu Sales Tax Appellate Tribunal.

2. The following substantial question of law arises for consideration:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in sustaining the addition even after holding that the petitioner has filed a revised return and paid the tax is correct in law?

Factual matrix

3. The petitioner is a dealer in boiler components and an assessee on the file of the Commercial Tax Officer, Tiruverumbur Assessment Circle, Trichy. During the year 1999-2000, the assessee filed returns showing the total and taxable turnover. In the meantime, there was an inspection by the enforcement wing officers in the business premises of the dealer and in the said inspection, it was found that two invoices dated May 2, 1999 and November 3, 1999 for a sum of Rs. 2,30,000 and Rs. 4,60,000, respectively, were omitted to be included in the returns. Immediately, after the inspection, the dealer had filed revised return for the months of April, May, July and November, 1999 on October 3, 1999,

disclosing the entire taxable turnover. The assessment was subsequently finalised on a total and taxable turnover of Rs. 25,36,200 and Rs. 12,89,040, respectively, as per assessment order dated February 19, 2001.

4. Subsequently, the assessing officer reopened the assessment invoking Section 16(1)(a) of the TNGST Act on the ground that the dealers have deliberately failed to show the sales effected as per invoice dated May 2, 1999 and November 3, 1999 and accordingly, the assessment order was revised and the turnover alleged to have been suppressed were also included in the total turnover and three times of the said amount was taken as possible suppression and accordingly, fresh assessment order was passed on June 25, 2001. The assessing authority also imposed penalty u/s 12(3)(b) as well as u/s 12(3)(c).

5. The assessment order dated June 25, 2001 was taken up in statutory appeal before the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, the assessee contended that though there was sales suppression, amounting to Rs. 6,90,260, the same was subsequently shown in the accounts by filing the return in form 12A and the said amount was also taken into consideration while determining the total taxable turnover for the assessment year 1999-2000 as per order dated February 19, 2001.

6. The Appellate Assistant Commissioner having found that the taxable turnover originally assessed at Rs. 12,89,040, inter alia, included the suppressed turnover of Rs. 6,90,260, was of the opinion that the assessing officer was not correct in adding three times by way of possible sales omission and accordingly, the said addition was set aside. However, the Appellate Assistant Commissioner confirmed the addition of Rs. 6,90,260 as sales suppression. The assessing authority also sustained penalty levied u/s 12(3)(c) as well as u/s 12(3)(b) of the TNGST Act and allowed the appeal in part.

7. Aggrieved by the order dated March 19, 2002, the assessee filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal was convinced that the actual sales suppression of Rs. 6,90,260 was subsequently shown in the revised return and even before passing the final assessment order, the dealers have accounted for the omission. However, the Tribunal confirmed the order of the Appellate Assistant Commissioner levying tax at 11 per cent on the escaped turnover of Rs. 6,90,260. The levy of penalty u/s 12(3)(b) was set aside, but, however, with respect to levy of penalty u/s 12(3)(c), the Tribunal directed the assessing officer to calculate the actual period of delay in payment of tax and to levy penalty as per the provisions of the Act. It is the said order which is impugned in the present tax case.

8. The learned senior counsel appearing for the petitioner contended that when it was the admitted case of the authorities below that by way of revised returns the entire sales suppression was accounted for by the assessee, the assessing authority was not justified in reopening the assessment invoking the provisions of Section 16(1)(a) of the Sales Tax Act. According to the learned senior counsel,

in order to initiate proceedings for escaped assessment, the assessing authority must come to a categorical finding that the whole or any part of the turnover of business of the dealer has escaped assessment and as there is nothing to show in the present case about the escaped turnover, the assessing authority was not justified in reopening the assessment.

9. The learned Special Government Pleader appearing on behalf of the Department contended that when the assessee failed to disclose the sales turnover in the monthly returns, the assessing officer was justified in reopening the assessment by taking recourse to Section 16 of the Act and as such, the authorities were justified in re-determining the turnover by including the sales suppression.

10. We have perused the assessment order as well as the order passed by 10 the appellate authority and also the Tribunal. It is found from the assessment order as modified by the order of the appellate authority that though there was a sales suppression initially amounting to Rs. 6,90,260, the said amount was subsequently shown by filing the return in form A12. The said return was filed long before the completion of assessment proceedings. In fact, even as per the assessment order, the revised returns were filed on October 3, 1999 itself and the assessment was completed only on February 19, 2001. There was a clear finding in the order of the appellate authority to the effect that the taxable turnover originally assessed included the turnover of Rs. 6,90,260, which was found omitted originally. It is true that the assessee had declared the sale effected on May 2, 1999 and November 3, 1999 only after the inspection by the enforcement authorities. But, however, the fact remains that immediately after the inspection, the entire turnover was reported by filing revised return.

11. When the sales suppression was accounted for by the dealer themselves, and the same was also taken into consideration by the assessing officer while determining the total and taxable turnover, it was not open to the assessing authority to reopen the assessment by invoking Section 16(1)(a) of the Act on the ground that the sales suppression though subsequently accounted for, has been reported to the Department only on account of the detection of the case by the enforcement wing officials.

12. Section 16(1)(a) permits the assessing authority to determine the escaped turnover in case the officer was of the opinion that the whole or any part of the turnover of business of a dealer has escaped assessment to tax. It was open to the appellate authority to take such a course within a period of five years from the order of final assessment. Therefore, the primary requirement is the factum of escaped assessment and unless and until there was reason to believe that either whole or any part of the turnover has escaped assessment to tax, the assessing officer has no jurisdiction for assessment of escaped turnover.

13. When admittedly the suppressed turnover was also taken into consideration for determining the total and taxable turnover for the assessment year

1999-2000, the Appellate Assistant Commissioner as well as the Tribunal were not justified in adding the sales suppression again for the purpose of re-determining the taxable turnover. Sale amount of Rs. 6,90,260 had already suffered tax on account of the revised return submitted by the assessee and the assessing officer completed the assessment on the basis of such revised returns. It was only by resorting to Section 16(1)(a) that the authority reopened the assessment and added the suppressed amount as well as addition of three times for possible suppression. When there was no escaped assessment for the year 1999-2000, there was no requirement for setting aside the earlier assessment order and to revise the assessment. Therefore, we are of the opinion that the assessing officer was not legally justified in reopening the assessment by invoking Section 16(1)(a) of the Act. Accordingly, the question of law is answered in favour of the assessee and against the Department.

14. In the result, the tax case is allowed. No costs.