(2012) 04 MAD CK 0002

In the Madras High Court

Case No : Tax Case No. 1623 of 2008 and Revision No. 23 of 2008

R.K. Jain and Brothers APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2013) 59 VST 421

Hon'ble Judges : M. Venugopal, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : C. Rekha Kumari, for the Appellant; Sivaraman, Special Government Pleader (Tax), for the Respondent

Judgement

Elipe Dharma Rao, J.—The tax case revision was transferred from the Special Tribunal on its abolition. The tax case revision was admitted

on the following substantial question of law:

Whether the Tribunal, being a final-fact finding authority, is correct in simply extracting the finding arrived at by the lower authorities and confirmed

it without independent application of its mind and without reasonableness?

The petitioner is carrying on business in Zandu Balm and other pharmaceuticals items. For the assessment year 1996-97, the petitioner reported

taxable turnover as follows:

2. Accepting the aforesaid total amount as total and taxable turnover, the Commercial Tax Officer, by order dated September 30, 1997,

confirmed the aforesaid amount. Against the said order, an appeal was preferred before the Appellate Assistant Commissioner, who, by order

dated July 20, 1998, modified the taxable sales turnover to Rs. 54,19,743.78, thereby granting exemption to the amount of Rs. 2,41,32,802.88

levied between the period July 17, 1996 and March 31, 1997. Aggrieved by the aforesaid order, the Revenue preferred Appeal in S. T. A. No.

45 of 1998 before the Tamil Nadu Sales Tax Appellate Tribunal, which, by order dated March 7, 2000, allowed the appeal. The said order came

up before the Tamil Nadu Taxation Special Tribunal by revision. On the abolition of the Tribunal, the matter came to be transferred to this court as

tax case.

3. The learned counsel appearing for the assessee has contended that the Sales Tax Appellate Tribunal, while reversing the order of the Appellate

Assistant Commissioner, has not assigned any reason for such reversion and has set aside the order in a mechanical manner without any

reasonableness. Further he contended that the order of the Tribunal is liable to be interfered with in view of the earlier Division Bench order of this

court in State of Tamil Nadu Vs. National Time Co.,

4. Heard the learned counsel for both sides at length and perused the materials on record including the decision relied on by the petitioner.

5. The question arises for consideration is as to whether the petitioner is entitled for exemption from the sales turnover for the period from July 17,

1996 to August 31, 1996?

6. The contention of the assessee is that in the said financial year as the turnover did not exceed rupees one hundred crores, there would be no

liability of additional sales tax on the assessee and it is also his further contention that the order of the assessing authority to the extent not having

applied the unamended provision, namely, section 2(1)(a) as it originally stood, wherein first ten lakhs of rupees has to be deducted in the taxable

turnover, was liable to be interfered with.

7. In order to appreciate the contentions, we have gone through the order of the Tribunal. As rightly pointed out by the learned counsel for the

assessee, the Tribunal has not dealt with the matter in detail and it has failed to discuss the issue as to whether the assessee would be liable to pay

additional sales tax in the light of amended sections 2(1)(a) and 2(1)(aa). All along, the contention of the assessee is that it is liable for exemption

from August 1, 1996 in view of the amended sections and before the end of the year, the taxable turnover has not exceeded rupees one hundred

crores. Though the said contention was accepted by the appellate authority, the

Tribunal has reversed the said decision without assigning any

reason.

8. It is not in dispute that the total turnover of the assessee did not exceed rupees one hundred crores in the financial year 1996-97. It is not in

dispute that the amended provisions of section 2(1)(a) came into effect from August 1, 1996. Therefore, the payment of additional sales tax would

arise only if the taxable turnover for the whole of the financial year exceeded rupees one hundred crores. Moreover, for the period up to July 31,

1996, the liability has to be worked out as per the provision prevailing on that date, i.e., under unamended section 2(1)(a) and for the subsequent

period as per the amended provision. This view is amply supported by the earlier Division Bench of this court in State of Tamil Nadu Vs. National

Time Co., . In the said decision, while dealing with the effect of amended provision, the Bench observed as follows:

18. The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force up to July 31, 1996,

the calculation of additional sales tax would have to be made by the assessing authority for the taxable turnover which was prevailing only up to the

period July 31, 1996 and for the period subsequent to August 1, 1996, the liability would have been assessed, if at all the taxable turnover up to

the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied, viz., two percent.

was not in consonance with the statutory provision as was prevailing as on July 31, 1996. Since the taxable turnover did not cross Rs. 100 crores

during the said financial year, in the case of the respondent-assessee, the liability of additional sales tax will have to be calculated only for the

period up to July 31, 1996 and not beyond and that too, on the taxable turnover that was available up to that date, viz., July 31, 1996.

9. Applying the principle laid down in the aforesaid decision to the case on hand, we have no hesitation in reversing the order of the Tribunal. The

Tribunal, without considering the veracity of the aforesaid decision, has come to a wrong decision, which is liable to be set aside. For the reasons

stated above, the tax case is allowed. No costs.