(2013) 11 MAD CK 0296

In the Madras High Court

Case No : Tax Case (Appeal) No. 190 of 2009

S. Moorthy — APPELLANT

Vs

Joint Commissioner of Commercial Taxes (SMR) — RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 44 GST 560

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Judgement

Chitra Venkataraman, J.—The assessee is on Tax Case (Appeal) as against the order of the Joint Commissioner relating to the assessment year 1993-94. The assessee is a registered dealer in Stainless Steel wares. The place of the business of the assessee was inspected by the Enforcement wing Officials on 11.08.1993. The verification of the stock at the time of inspection revealed differences between the actual stock and the book stock. It was further found that the assessee had written the books up to 07.08.1993 and there was no production-cum-stock book and total in the day book were struck in pencil. Apart from this, the assessee''s premises was inspected yet again on 26.03.1994 in the business place as well as principal place of business and house, which led to recovery of four slips relating to the business transactions. Based on the materials, thus recovered, the Assessing Officer, apart from making addition on actual suppression added estimated sale of stainless steel vessels and Stainless steel scraps and levied penalty u/s 12(3)(b)(v) of the Tamil Nadu General Sales Tax Act. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner.

2. While confirming the actual suppression, the First Appellate Authority deleted the further addition on estimation. Thus, correspondingly, the First Appellate Authority also reduced penalty to match the actual suppression upheld by the Appellate Assistant Commissioner.

3. The said order of the Appellate Assistant Commissioner was however

subjected to suo motu revision by the Joint Commissioner. After hearing the assessee, the Joint Commissioner restored the assessment as well as penalty.

4. As regards the present Tax Case (Appeal), a perusal of the order reveal that while upholding the actual suppression, the First Appellate Authority pointed out that the slips recovered during the inspection and the entries in the slips did not contain specific dates of the transaction and therefore, it could be construed for the whole period and not for any particular period, thus, giving benefit of doubt, the further addition was cancelled; on the aspect of stock discrepancy too, the First Appellate Authority cancelled the addition. The Joint Commissioner, while revising the order had not stated any specific period for the slip to fix it with any particular year for consideration; except for the view expressed to disagree with the findings of the Appellate Assistant Commissioner. In the circumstances, we agree with the submission of the assessee that there are no grounds shown to uphold the order of the Joint Commissioner and there are no grounds for sustaining further addition by way of estimation. In the circumstances, cancelling further addition on slips, we set aside the order of the Joint Commissioner and restore the order of the Appellate Assistant Commissioner. In the result, the Tax Case (Appeal) stands allowed. No costs.

