(2013) 08 MAD CK 0093

In the Madras High Court

Case No : Tax Case (Revision) No. 409 of 2011

Sapthagiri Glass Works APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0093

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Soundararajan, for the Appellant; Manoharan Sundaram Spl. G.P. (Taxes), for the Respondent

Judgement

Chitra Venkataraman, J.—The assesee is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment year

2001-2002 raising the following question of law:-

1. Whether the Appellate Tribunal had considered the fact that the alleged inter-State purchase omissions were duly recorded in the book of

accounts and the corresponding sales were submitted for assessment at the time of making the original assessment and, therefore, the revision

made on the very same turnover is not in accordance with the provisions of the Act and also not in accordance with the principles laid down by this

Court in its judgment reported in 3 MTCR page 82 in the case of Gomraj Metal Wares, Madras wherein it was held that the accounted for

turnover need not be again taken as suppression and additions and cannot be made on the same ?

It is seen that there was an inspection conducted on 14.12.2001 in the assessee''s shop in respect of the assessment year 2001-02. The inspection revealed that the Day Book was not written after 02.11.2001, no stock book maintained for the purchase of first sale of goods and second sale of

goods, no opening stock inventory as on 01.04.2001 maintained and produced, seven slips (sales effected) recovered amounting to sales omission

of Rs. 52,052/-, certain inter-State purchases for a sum of Rs. 4,84,922 were not posted through the accounts and the stock were held in the

godown but the Registration Certificate fees for the godown was not paid; the maintenance of godown was not reported to the Department.

2. Based on the materials seized, the assessment was completed. While doing so, the Assessing Officer also made further addition of two times

towards probable omission. Apart from that, penalty was also imposed. Aggrieved by that, the assessee went on appeal before the Appellate

Assistant Commissioner, who allowed the appeal in part.

3. The First Appellate Authority confirmed the addition made on account of seven slips recovered. As regards the subsequent accounting of the

transactions, the First Appellate Authority agreed with the assessee and he deleted further addition made under the head of probable omission.

Thus, the First Appellate Authority partly allowed the assessee''s appeal.

4. Aggrieved by this, the Revenue went on appeal before the Sales Tax Appellate Tribunal, who pointed out that the assessee had not maintained

the godown with proper licence and the details of inter-State sale could not be verified since all the entries were said to be available in the

computer, which was stated to be locked under the secret password of the Auditor and in such circumstances, the contention of the assessee that

the purchase details were available in the computer was found unacceptable. The Sales Tax Appellate Tribunal further pointed out that the

inspection revealed that the assessee had not maintained separate stock book for inter-State purchases and local purchases as on 14.12.2001; the

opening stock details as on 1.4.2001 was not maintained item wise. In the background of this, the Sales Tax Appellate Tribunal considered that

the subsequent accounting of the transactions of inter-State purchase would not by itself be a ground to grant the relief to the assessee. The Sales

Tax Appellate Tribunal further pointed out that admittedly, there were stock differences and suppression of inter-State purchases and that

purchase account did not contain these purchases was admitted by the assessee at the time of inspection; no reconciliation of stock was possible at

the time of inspection and no separate stock account for inter-State purchases and local purchases were maintained. The assessee did not also

produce all delivery challans and sale bills at the time of inspection. Based on these facts, the Tribunal confirmed the addition. However, on further

addition to be made on assessment of turnover, considering the facts as stated above, the Sales Tax Appellate Tribunal restricted the addition to

equal time on the suppression found. On penalty, the Tribunal pointed out that as inter-State purchases were subsequently recorded in the

accounts before passing the assessment order and there was no balance of tax payable in the assessment, no penalty was leviable in the facts of the

case. Thus, on penalty, the Sales Tax Appellate Tribunal confirmed the order of the First Appellate Authority and granted relief. Aggrieved by this,

the assessee has preferred the present Tax Case (Revision) before this Court.

5. As far as the confirming of the assessment on actual suppression is concerned, we do not find any justifiable ground to differ from the order of

the Sales Tax Appellate Tribunal, being it based on facts. But, however, on equal time addition made by the Sales Tax Appellate Tribunal towards

probable omission is concerned, we however agree with the contention of the assessee that when the Sales Tax Appellate Tribunal had accepted

the case of the assessee on the subsequent accounting of the inter-State transaction, we do not find any justifiable ground to uphold the further

addition towards probable omission.

6. In the circumstances, while confirming the order of the Tamil Nadu Sales Tax Appellate Tribunal on the actual suppression found, we do not

find any ground to uphold the order of the Sales Tax Appellate Tribunal in sustaining equal time addition. Thus, while deleting the further addition

towards probable omission, we confirm the order of the Sales Tax Appellate Tribunal. In the result, the Tax Case (Revision) stands partly allowed.

No costs.