

(2009) 03 KAR CK 0014
In the Karnataka High Court
Case No : S.T.R.P. No. 140 of 2008 (Tax)

State of Karnataka

APPELLANT

Vs

N. P. Bharmiah and Sons

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (4)

Citation : (2011) 41 VST 498

Hon'ble Judges : Manjula Chellur, J;B. V. Nagarathna, J

Bench : Division Bench

Advocate : Geetha Menon, for the Appellant;

Final Decision : Dismissed

Judgement

Mrs. B. V. Nagarathna, J.—This revision petition is filed by the State challenging the order dated May 9, 2008 passed in S. T. A. No. 526 of 2005 raising the following questions of law :

1. In the facts and circumstances of the case whether the Tribunal is justified in setting aside the further addition of tax on the established/admitted suppression of turnover ?

2. In the facts and circumstances of the case whether the Tribunal is right in setting aside the order passed by the assessing authority and confirmed by the first appellate authority ?

2. The relevant facts of the case are that the respondent is a partnership firm dealing in paints. Final assessment order under the Karnataka Sales Tax Act, 1957 for the year 2002-03 was passed by the Assistant Commissioner of Commercial Taxes, IV Circle, Mysore on August 21, 2004 arriving at a gross turnover and taxable turnover of Rs. 62,69,861 and Rs. 1,10,800, respectively and penalty was also levied u/s 12(4) of the Act. Being aggrieved by the said assessment order, the respondent filed an appeal which was before the first appellate authority which was dismissed. Thereafter second appeal was filed

before the Tribunal. The Tribunal by its order dated May 9, 2009 allowed the appeal and set aside the order of the first appellate authority as well as the assessing authority for the year 2002-03 and directed the assessing authority to issue revised demand notice. Being aggrieved by the said order the State has filed this revision petition raising the above questions of law.

3. We have heard Smt. Geetha Menon, the learned Additional Government Advocate for the State. She submits that the Tribunal was not right in setting aside the order of the assessing authority which was confirmed by the first appellate authority by stating that on the basis of the report of inspection by the Assistant Commissioner of Commercial Taxes (Intelligence) the assessing authority estimated the second sales turnover to an extent of Rs. 24,50,076 which has been arrived at by adding additional second sales turnover of Rs. 11,77,632, i.e., one time of addition of stock difference of suppressed sales turnover detected by the intelligence authority at Rs. 11,77,632 which is correct. Therefore, the Tribunal could not have set aside the said order.

4. On perusal of the material on record, we find that the respondent had accepted the stock difference and agreed to addition proposed by the intelligence authority at Rs. 11,77,632 but had not agreed to further addition of Rs. 11,77,632 made by the assessing authority which was confirmed by the first appellate authority. However, the Tribunal has categorically recorded that the assessing authority while basing its assessment on the inspection report furnished by the Assistant Commissioner of Commercial Taxes. (Intelligence) arrived at a turnover of Rs. 24,50,076 which is based on pure guess work and on which penalty at the rate of 1.5 per cent was levied. The Tribunal has also recorded that the finding of the intelligence authority is at Rs. 10,08,006. If that be so then there was no other material for making the further additions. The Tribunal has further opined that if the detection of stock difference was to an extent of Rs. 10,10,571 and the intelligence wing estimated the sale of tax-suffered goods for resale tax based on the deficit in stock noticed at the time of inspection in respect of which reasonable gross profit of suppressed sale of tax-suffered goods was estimated at Rs. 1,77,632. If that be so there was no material to make further estimation towards the turnover to an extent of Rs. 11,77,632 over and above the turn over reported by the intelligence. Therefore, while upholding that portion of the order of the first appellate authority regarding the estimation of sales and the levy of penalty u/s 12(4) of the Act, the Tribunal allowed the appeal in part.

5. Having regard to the reasons given by the Tribunal and the fact that no material was placed on record to show the further addition made the same is arbitrary and therefore, we agree with the reasons given by the Tribunal and confirm the order.

6. Accordingly, the revision petition is dismissed.