(2011) 10 MAD CK 0135

In the Madras High Court

Case No : Tax Case (Revision) No. 1255 of 2006

State of Tamil Nadu — APPELLANT

Vs

All India Tools Centre — RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b), 2(1)(b), 22, 3(2), 3B

Citation : (2013) 60 VST 106

Hon'ble Judges : P.P.S. Janarthanaraja, J;P. Jyothimani, J

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader Taxes, for the Appellant; S. Parthasarathy for K. Kumaresan, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Revenue is on revision as against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, made in T. A. No. 489 of 1999 dated January 31, 2000. The revision was admitted on the following substantial question of law: Whether, in the facts and circumstances of the case, the Tribunal is right in deleting the penalty imposed u/s 12(3)(b) as additional sales tax components?

The issue involved in this case is relating to imposing of penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959, in respect of dues under the Tamil Nadu Additional Sales Tax Act, 1970. The power to impose penalty in the light of the said provision has been admittedly given only from the year 1997. On the facts of the present case, the assessment relates to 1995-96. The said issue has been covered by the judgment of this court in Eastern Electrics v. State of Eastern Electrics Vs. State of Tamil Nadu, in favour of the assessee holding that in respect of the period before 1997, there is no power to impose penalty, wherein at paragraph 19, it was held as follows:

The State of Tamil Nadu Vs. P.M.A. Mathurai Veerasamy and Co., had rightly held that if it was the intention of the Legislature that the entire gamut of the provisions of the principal Act were to be applied to the later Act then it could very well have said so: and that if section 3(2) had been so worded then, there would have been no difficulty to hold that section 22 of the TNGST Act was also attracted by reference. We respectfully think that this is the correct way to understand the section. We have to read section 2(1)(b) in an identical way. If so, then the AST Act as it reads before the amendment had no charging provision. A charging section is substantive law as seen in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, . Therefore, there can be no levy of penalty without the charging section. This is in India Carbon Ltd. etc. Vs. State of Assam, and J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, The judgments, which deal with clarificatory sections are of no help since the section 3B is not a clarificatory section, it introduces for the first time the power, to levy penalty. Karthik Roller Flour Mills case (Writ Petition Nos. 6777 and 6778 of 2001 decided on August 14, 2002-Madras. High Court) correctly, hold that in the absence of the substantive provision, in the AST Act itself, relating to levy of interest, the provisions of the TMGST Act cannot be the source of power of such levy. Similarly, unless- there is a charging section for levy of penalty, there can be no automatic reading of the power to levy penalty. The levy of penalty cannot be sustained. We are in agreement with S.P.G. Ramasamy Nadar and Sons Vs. Commercial Tax Officer-III and Others, . In our view, therefore, we see no reason to refer the matter for reconsideration.

2. In such view of the matter, the tax case revision stands dismissed and the question of law is answered in favour of the assessee. No costs.

