(2009) 07 MAD CK 0445

In the Madras High Court

Case No : Tax Cases (Revision) No. 2357 of 2008

State of Tamil Nadu APPELLANT

Vs

Anamallais Engineering RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

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

Citation : (2010) 28 VST 322

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : Haja Naziruddeen, Special Government Pleader for Taxes, for the Appellant; N. Inbarajan, for the Respondent

Judgement

B. Rajendran, J.—The Revenue is the petitioner herein. The assessing authority in his revised order dated February 28, 1997 levied a penalty of Rs. 43,988 u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 and also confirmed the assessment in a turnover of Rs. 5,10,000 for the financial year 1994-95. Aggrieved against the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who in turn confirmed the order of the assessing authority and dismissed the appeal. Aggrieved against such dismissal, the assessee filed an appeal before the Sales Tax Appellate Tribunal disputing both the turnover and the penalty of Rs. 43,988 levied u/s 12(3) of the Act. Since the assessee had not pressed for the main issue, viz., fixation of turnover at Rs. 5,10,000, the Tribunal confirmed the assessment order in respect of the turnover, but the only question, which was disputed and argued at length before the Tribunal, was that the levy of penalty u/s 12(3) of the Act in view of the subsequent development in law. The Tribunal found that the assessment was made based on the accounts produced by the assessee before the Department and not on the basis of any other material. Therefore, if any assessment was made u/s 12(1), the penalty u/s 12(3) cannot be invoked. The Tribunal relying upon the decision of this Court Appollo Saline Pharmaceuticals (P) Ltd. v. Commercial Tax Officer (FAC) reported in [2002] 125 STC 505 has categorically held that as the assessment has been completed u/s 12(1), especially when the amounts were available in the records, question of imposition of penalty u/s 12(3) does not arise. The relevant portion of the decision of this Court (cited supra) is extracted as under (at pages 508-509):

Though other sub-sections of Section 12 were amended by the State Legislature subsequent to the date of the judgment in the case of The State of Madras Vs. S.G. Jayaraj Nadar and Sons, , Sections 12(1) and 12(2) have remained in the same form. The legislative intention therefore, except during the period December 3, 1979 to May 27, 1993 and on and after April 1, 1996 must be taken to be to, permit the levy of penalty only in case where the assessment is a best judgment assessment made on an estimate and not by relying solely on the accounts furnished by the assessee in the prescribed return. On and after April 1, 1996 an Explanation has been added below Section 12(3) which requires the turnover relating to the tax assessed on the basis of the accounts of the assessee, to be disregarded, while determining the turnover on which the penalty is to be levied u/s 12(3).

2. A reading of this ruling would categorically prove beyond any reasonable doubt that the said decision is squarely applicable to the facts of the present case. Following the said decision, the Tribunal has rightly set aside the penalty alone imposed by the authority u/s 12(3) of the Act.

3. We find no reason to interfere with such reasonable finding given by the Tribunal. No question of law much less substantial question of law would arise for entertaining the revision and the same is accordingly dismissed. No costs.

