(2012) 01 MAD CK 0294

In the Madras High Court

Case No : T.C. (R) No. 208 of 2011

State of Tamil Nadu — APPELLANT

Vs

A.V.M. Engineering Works — RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2013) 63 VST 152

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

Bench : Division Bench

Advocate : Manoharan Sundaram, Special Government Pleader, for the Appellant;

Judgement

P.P.S. Janarthanaraja, J.—The above tax case revision is filed as against the order of the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore, dated May 30, 2003 in CTA No. 56 of 2002 for the assessment year 1996-97, raising the following substantial questions of law:

(1) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in deleting the turnover of Rs. 1,95,424 without offering any finding and appreciating the facts put forward ?

(2) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in observing that the dealers had sold only finished goods that is looms and hence there cannot be any room for estimation of spares overlooking the fact that the assessees are manufacturers and purchasers of looms and hence estimation of purchase suppression is valid ?

The respondent-assessee is a manufacturer of power loom spares. The relevant assessment year is 1996-97 and in respect of the said assessment year, the assessee was assessed on a total and taxable turnover of Rs. 1,44,794. Later there was an inspection by the officers of enforcement wing on September 4, 1998 and certain incriminating documents were recovered and from those records, it was found that there was suppression. Therefore, the assessing officer made addition of actual suppression as well as equal amount to such probable omission and determined the taxable turnover at Rs. 1,15,01,092 in the revised order. Aggrieved by that order, the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the Revenue had not established that the assessee has resorted to similar pattern of suppression throughout the year. Therefore, the Appellate Assistant Commissioner deleted the equal addition. Further, in respect of actual suppression, the assessing officer was directed to add five per cent to the actual sales turnover and determined the taxable turnover at Rs. 56,95,365. Aggrieved by that order, the assessee filed an appeal before the Sales Tax Appellate Tribunal. Before the Appellate Tribunal, the assessee has restricted his claim against the turnover disputed in the grounds of appeal, i.e., turnover of dispute restricted at the time of hearing to Rs. 1,95,424 as against Rs. 56,95,365 turnover disputed in the grounds of appeal before the Tribunal. The Appellate Tribunal deleted the turnover of Rs. 1,95,924.

Aggrieved by that order, the Revenue has filed the present revision raising the above questions of law.

2. The learned counsel appearing for the Revenue vehemently contended that the Tribunal ought to have seen that suppression was culled out from the account books during the course of inspection from the place of business and therefore, the order passed by the Tribunal in holding the assessment is without any valid materials and evidence and the same has to be set aside.

3. Heard the learned Special Government Pleader (Taxes) appearing for the Revenue and perused the documents available on record. A factual finding given by the Tribunal in para 20 reads as follows:

20. On a perusal of the D7 note book, it is found that the turnover of Rs. 46,330 entered in page No. 25 of the said anamath record, relates to brought forward entries in respect of the account of Allur Muthusamy. Hence, it does not relate to any sale of looms. Therefore, the said turnover cannot be considered for assessment of sales turnover of the looms as assessed by the assessing authority. The learned Authorised Representative has also furnished such details regarding the sales of powerloom spares to an extent of Rs. 1,42,385 and therefore as rightly claimed by the appellant, the assessment made on the proportionate purchase value of spares in respect of such sale of spares is found to be uncalled for. Thus, the appellant is entitled for a relief to the extent of turnover as worked out below:

The Tribunal given a categorical finding that the turnover of Rs. 40, 360 which was found in the entry in the account book does not relate to any sale of looms. Therefore, it cannot be considered for the assessment of sales turnover of looms. Further, in respect of power looms spares, to the extent of Rs. 1,42,385, the assessment was made under proportionate purchase value of the spares in respect of such sale of spares. Therefore, the Tribunal was of the view that the addition is uncalled for. Therefore, the Tribunal is correct in deleting the turnover of Rs. 1,95,424 and the finding rendered by the Tribunal is based on valid materials and evidence. There is no error or irregularity in the order of the Tribunal warranting interference. In such circumstances, no substantial questions of law arise for our consideration and the tax case revision is dismissed.

