(1995) 09 MAD CK 0071

In the Madras High Court

Case No : Tax Case (Revision) No. 1750 of 1984

State of Tamil Nadu APPELLANT

Vs

Bhavani Oil Mills RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12

Citation : (1995) 09 MAD CK 0071

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The State is the petitioner. The assessee is Bhavani Oil Mills, Poonamallee. The Tribunal after hearing the arguments of the learned counsel and perusing the records, sustained the assessment on a turnover of Rs. 807.80 and deleted the turnover of Rs. 6,000. The Tribunal also deleted the penalty levied u/s 12(5) of the Act holding that the assessing officer had resorted to the best judgment assessment, since the accounts were found not correct. According to learned Additional Government Pleader (Taxes), the order of the Tribunal, deleting the penalty, is not acceptable. It was submitted that even though section 12(4) of the Act was not attracted, the penalty is exigible in the present case u/s 12(3) of the Act. In order to support this contention, reliance was placed upon the decision in Devendran and Company Vs. State of Tamil Nadu, .

2. We have heard learned Additional Government Pleader and also perused the records in the case carefully. In the present case, the books of accounts maintained by the assessee were found to be incorrect. In a case where the accounts maintained by the assessee are correct, but the return filed by the assessee is incorrect, penalty is exigible u/s 12(5) of the Act. As already pointed out, in the present case, the books of accounts are found to be not correct. Therefore, if at all penalty is exigible, it can be levied only u/s 12(3) of the Act. For levying penalty u/s 12(3) of the Act, mala fide has to be established. In the present case, there is no scope warranting such a mala fide on the part of the

assessee. Hence, penalty u/s 12(3) is also not possible. Therefore, the decision in Devendran and Co.''s case [1983] 53 STC 229 (Mad.) is not applicable to the present case. We are not able to interfere with the order of the Tribunal for that reason. In the result, the revision is dismissed. No costs.

3. Petition dismissed.

